OFFICE OF THE
AUDITOR GENERAL
MANITOBA

November 2009

Report to the Legislative Assembly - Audits of Government Operations

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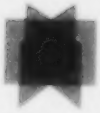

OFFICE OF THE
AUDITOR GENERAL
MANITOBA

November 2009

The Honourable George Hickes
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my report titled, *Report to the Legislative Assembly - Audits of Government Operations*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Sections 14(4) and 28(1) of The Auditor General Act.

Respectfully submitted,

Original document signed by:
Carol Bellringer

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Overview by the Auditor General

I am pleased to present my 2009 *Report to the Legislative Assembly - Audits of Government Operations*. This report combines the results of four audits and continues the reporting format introduced by my Office last year.

In addition to this combined annual report on government operations, I will continue to report annually on our audit of the Public Accounts (to be issued in December 2009) and on our Office operations (issued in July of each year). A follow-up report on the implementation of previous recommendations issued by this Office was released in March 2009 and will be updated annually. As permitted by my Act, Special Audits will continue to be released to the Assembly on any matter of pressing importance or urgency that should not be deferred until the next annual report.

Each of the four audits is reported in a "Chapter" and all four audits were conducted in accordance with value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

All four audits in this report contained positive conclusions, yet each one identifies areas where attention is required to strengthen operations and where matters of non-compliance should be rectified.

The audits are summarized below. Each of the chapters which follow provides further information about the program, our audit objectives, findings and audit recommendations. We also give departmental management (and in the case of Chapter 4, the Legislative Assembly) the opportunity to respond to our reports and we include their comments. In all cases, we had the full cooperation of program officials. We would like to thank each of them for their time and assistance throughout our audits.

Chapter 1: Meeting Manitoba's Obligations Under the 1997 Treaty Land Entitlement Framework Agreement

The Government of Manitoba (Manitoba) is a signatory to the Treaty Land Entitlement (TLE) Framework Agreement, which sets out the principles for the selection and acquisition of over one million acres of land in Manitoba to be set apart as reserve for First Nations in order to satisfy outstanding treaty land obligations. Successful implementation of the Agreement, measured by the transfer of land to Canada to be set apart as reserve for First Nations, is highly dependent upon the working relationships established amongst the parties to the Agreement (the Treaty Land Entitlement Committee of Manitoba Inc. representing 21 First Nations, the Governments of Canada and Manitoba) and requires the on-going commitment and cooperation of all parties to succeed.

Our audit was limited to the systems and practices developed by Manitoba to fulfill its obligations under the Framework Agreement. While it was difficult to separate the various administrative activities for each of the individual parties, we focused on Manitoba's identification of issues to be resolved on land selections and the resolution of these issues. In support of this, we reviewed Manitoba's data collection and file management, as well as internal coordination amongst the Provincial departments and agencies involved. We also reviewed Manitoba's role in communicating progress externally – to other parties to the Agreement and publicly.

Some significant progress has been made in meeting TLE commitments. Also, in reviewing Manitoba's progress to date, we noted that the Department of Conservation had developed a comprehensive database (known as TRELES) to track individual parcel selections, the issues related to each parcel selection and the dates these issues were identified and resolved. This database provides valuable information which is used by all parties to the Agreement. While our audit identified certain areas where administrative practices could be strengthened, it is noteworthy that the database provides the most critical element needed to effectively manage the administrative details.

Our audit report provides a great deal of detail about the progress and challenges in resolving issues related to individual parcels of land. The pace of on-going discussions concerning identified issues is affected by the strength of the management frameworks supporting the parties to the Agreement, as well as a variety of other factors. We acknowledge that periodic communication from Manitoba to First Nations regarding the status of parcel selections, Manitoba's participation in the development of a documented long term action plan, and public reporting of progress are positive steps. Our report also identifies areas which we believe should be strengthened to allow Manitoba to build upon its accomplishments to date and further enhance its future ability to meet its Framework Agreement obligations and related commitments.

Chapter 2: Personal Care Homes Program

Personal Care Homes (PCHs) provide 24-hour, 7 days-a-week supervised care, including health care services, to seniors who can no longer manage safely at home, even with family support and community services. The Department of Health and Healthy Living (the Department) oversees and regulates PCHs, with certain responsibilities delegated to the Regional Health Authorities (RHAs).

Demographic projections provided by the department show Manitoba's population of seniors aged 75 and older growing by 91% between 2006 and 2036. Many are vulnerable to potential harm because of their age, as well as physical and cognitive impairments.

We examined the Department's processes for ensuring the quality of PCH care; assessment and placement procedures for PCH admission, including management of PCH wait lists; long-term capital planning for meeting future PCH bed needs; and processes for ensuring PCH financial and operational accountability, including funding mechanisms and public performance reporting.

Our findings included:

- **Standards Visits**: Regulated PCH standards were in place and consistent with other jurisdictions. Teams with appropriate skills and training visited each PCH once every two years to assess compliance with standards. However, visits were always scheduled in advance and during weekdays. In addition, the Department did not use potential risk factors (such as trends in critical incident reports) to determine visit frequency or the standards to be assessed. The Department followed-up on required improvements, but did not meet its goal of performing follow-up visits to 30% of the PCHs with completed action plans, relying instead on RHA oversight. The Department also did not summarize Province-wide standards results to determine any action required to respond to trends and improve outcomes. We compiled these results as at December 31, 2008 and found more than half the PCHs had not met 4 of 5 core standards. This reflected both the level of compliance and the assessment methodology used.
- **Licensing**: The Department had established a license review process for renewing PCH licenses. However, it had not developed formal criteria for licensing and a review was not always conducted to ensure processes were in place to meet PCH standards when issuing a license to a new PCH.
- **Wait Lists**: RHAs monitored and managed PCH wait lists, but some did not have systems to track how long each senior had been waiting or the average wait time.
- **PCH Facility Long Term Planning**: The Department gathered data for PCH facility long term planning, but had not reassessed capital funding requirements to reflect the current status of the Aging in Place strategy and current PCH capital needs identified by the RHAs.
- **Financial and Operational Accountability**: Different PCH funding formulas had evolved over the years that were not logically supported by current data and analysis, although a new funding initiative will partially address some of the issues. Service Purchase Agreements held the PCHs accountable to the RHAs for financial and operating performance, but for-profit PCHs were not required to provide audited financial information. There was limited public reporting of PCH performance, such as results of standards visits and information on wait lists.

Chapter 3: Assessment Services Branch

Property tax revenues are the largest source of funding for local governments in Manitoba. In the Department of Intergovernmental Affairs, *2004 Statistical Information for Municipalities in the Province of Manitoba*, it was reported that property tax revenues for the 198 municipalities excluding Winnipeg totalled $256 million from properties with an assessed value of $10.6 billion. Fair assessments play a key role in ensuring the equitable distribution of the property taxes within each municipality, school division and the Province.

Our audit examined assessments conducted in four municipalities as part of the 2006 general reassessment. Our audit focused on whether there were well defined assessment processes, whether they were consistently followed and necessary information was available to make reasonable assessments or judgements of residential, farm and commercial property values.

We concluded the following:

- The property assessments we examined were conducted in a manner consistent with Branch methodology.
- For income generating commercial properties, there is a need for the Branch to increase its efforts to obtain business income and expense information from a greater proportion of property owners.
- The Branch should strengthen its risk based field inspection process to ensure all properties are inspected within a reasonable cycle. Inspections are important because they help ensure that property assessments are based on an accurate and complete inventory of existing property characteristics.
- Conclusions on the validity of a sale and on the property characteristics at time of sale are frequently based on assessor judgment only. As such, in many cases, the vendor or purchaser are not contacted, nor is the interior of the property inspected or the interior characteristics otherwise confirmed.
- The Branch needs to ensure that values recorded in its construction cost system reasonably reflect actual construction costs for the reference year.
- In 2005 a quality control review function was introduced but only with respect to the sales verification process. The risk conditions faced by the Branch support the need for a comprehensive quality control review function.
- The Branch needs to demonstrate that its assessment services are effective. To this end, the Branch has recently begun to explore the use of ratio studies.

Chapter 4: Members' Allowances

The Office of the Auditor General conducts an annual audit of the financial statements of the Allowance Claims for the Members of the Legislative Assembly. The financial statements disclose the total amounts spent by each Member for each allowance category for the fiscal years ended March 31. As a result of our audit, we issue an opinion on fairness of presentation of that statement.

In June 2008, we decided to conduct a more detailed audit of the Allowance Claims to go beyond the scope of a financial statement audit. Our audit covered 100% of Members' Allowance Claims for the two-year period from April 1, 2006 to March 31, 2008 excluding Members' Compensation (Indemnities) and salaries paid to constituency staff. Our audit also covered the Members' Printing Allowance for that same period.

Nothing came to our attention during this audit to suggest that material inappropriate spending was taking place. Our audit discovered that Members spent within the allowance limits. However, many of the allowance claims did not have adequate documentation, and therefore we are unable to provide assurance that the Members' Allowance Claims for the years ended March 31, 2007 and 2008 were all related to expenses for non-partisan access and service to constituents. Our audit did raise concerns around the existing culture and the current monitoring practices, and identified the need to update and modernize the rules.

We found that a culture has come to be adopted that permits expenditures without appropriate attention to details. Instead of exercising their monitoring role, we found examples of the Members' Allowances Office (MAO) taking a deferential role in relation to the Members. We became aware of MAO staff preparing or partially preparing claims for some Members and processing expenditures for items which should not have been permitted.

In a number of sections of this report we outline differences between the *Members' Allowances Regulation* (Regulation) and current practices. The differences are the result of Legislative Assembly Management Commission (LAMC) decisions and interpretations made by successive Commissions over a number of years. These amendments to the rules have, in our opinion, reduced the effectiveness of control procedures and now stray significantly from the intent of the Regulation. We believe that current practice would not be aligned with what citizens would expect from elected Members. Of significance is the difference between the Regulation and practice around office equipment, computers and furniture (capital assets) as well as in the nature of documentation required to be submitted to support Member donations (cash and products) and other contributions made to constituents and claimed under the Representation category.

With regard to capital assets, we found that while the Regulation clearly states that capital assets are "property of the Legislative Assembly", Members have been allowed to retain these items for personal use after a depreciation period.

With respect to required documentation, the Regulation specifically refers to the need for the Member to submit a "receipt" or in the case of a donation to a charitable or non-profit organization, an "official receipt". We found that often Members are not providing the required documentation. The Regulation does permit Members to complete a "Statutory Declaration Form" in the event that a receipt is lost or unattainable, which Members used over 400 times during the period of our audit. This practice is not adequate to demonstrate accountability over the use of public funds.

We also found that the Regulation has not been rigorously reviewed to ensure that it anticipates all expenditure categories and reflects a contemporary view of public expectations and best practices. There has been a need for the LAMC to provide interpretations when situations arise which are not clearly described in the Regulation. Most allowance categories include examples of this, but we found that clarity was particularly needed within Communication Charges, Donations and Gifts, Travel and Living Expenses.

Contemporary expectations around accountability and transparency are not reflected in the current Regulation. A separate regulation around disclosure is issued, being *The Members' Salaries, Allowances and Retirement Plans Disclosure Regulation* (Disclosure Regulation). Ironically the Disclosure Regulation is not readily available to the public. *The Legislative Assembly Act* requires that financial statements be prepared annually, summarizing the categories of expenditures. Our office audits these financial statements and they are made available to the public in Volume 3 of the Province's Public Accounts. However, the Disclosure Regulation only makes information about detailed transactions available upon request and after paying applicable fees.

To both prevent inappropriate expense reimbursements and protect Members from allegations of improper spending, a number of changes would have to be implemented. There is a need to update the rules, to clarify the documentation required to support the claims and to strengthen the monitoring practices. Section 6.0 of this report outlines our overall recommendations to improve the system and summarizes a number of items to be addressed when amending the rules.

Aboriginal and Northern Affairs

Chapter 1: Meeting Manitoba's Obligations Under the 1997 Treaty Land Entitlement Framework Agreement

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Foreword

The Government of Manitoba (Manitoba) is a signatory to the Treaty Land Entitlement Framework Agreement, which sets out the principles for the selection and acquisition of over one million acres of land in Manitoba to be set apart as reserve for First Nations in order to satisfy outstanding treaty land obligations. Successful implementation of the Agreement, measured by the transfer of land to Canada to be set apart as reserve for First Nations, is highly dependent upon the working relationships established amongst the parties to the Agreement (the Treaty Land Entitlement Committee of Manitoba Inc. representing 21 First Nations, the Governments of Canada and Manitoba) and requires the on-going commitment and cooperation of all parties to succeed.

Our audit was limited to the systems and practices developed by Manitoba to fulfill its obligations under the Framework Agreement. While it was difficult to separate the various administrative activities for each of the individual parties, we focused on Manitoba's identification of issues to be resolved on land selections and the resolution of these issues. In support of this, we reviewed Manitoba's data collection and file management, as well as internal coordination amongst the Provincial departments and agencies involved. We also reviewed Manitoba's role in communicating progress externally – to other parties to the Agreement and publicly.

Some significant progress has been made in meeting Treaty Land Entitlement commitments. Also, in reviewing Manitoba's progress to date, we noted that the Department of Conservation had developed a comprehensive database (known as TRELES) to track individual parcel selections, the issues related to each parcel selection and the dates these issues were identified and resolved. This database provides valuable information which is used by all parties to the Agreement. While our audit identified certain areas where administrative practices could be strengthened, it is noteworthy that the database provides the most critical element needed to effectively manage the administrative details.

Our audit report provides a great deal of detail about the progress and challenges in resolving issues related to individual parcels of land. The pace of on-going discussions concerning identified issues is affected by the strength of the management frameworks supporting the parties to the Agreement, as well as a variety of other factors. We acknowledge that periodic communication from Manitoba to First Nations regarding the status of parcel selections, Manitoba's participation in the development of a documented long term action plan, and public reporting of progress are positive steps. Our report also identifies areas which we believe should be strengthened to allow Manitoba to build upon its accomplishments to date and further enhance its future ability to meet its Framework Agreement obligations and related commitments.

1.0 Main Points

What We Examined

The Treaty Land Entitlement Framework Agreement was signed in 1997 by the Treaty Land Entitlement Committee of Manitoba Inc. (TLEC) representing 19 First Nations, the Government of Canada, and the Government of Manitoba. The Framework Agreement sets out the principles for transferring 1,100,626 acres of land in Manitoba to Canada to be set apart as reserve for First Nations in order to satisfy outstanding treaty land obligations. This includes the selection of 985,949 acres of Crown land and the acquisition of 114,677 acres of other land in Manitoba from willing sellers. The Department of Aboriginal and Northern Affairs (ANA) has the lead role in ensuring that Manitoba's Treaty Land Entitlement (TLE) obligations are met, although several other Provincial departments and agencies complement and support ANA's efforts. We examined the systems and practices developed by Manitoba to fulfill its obligations under this Framework Agreement.

Why It's Important

The implementation of the 1997 Framework Agreement fulfills an important constitutional obligation. The land to be transferred has significant historical, cultural, social and economic significance to First Nations. In some cases, the land is also expected to help to considerably improve the standard of living of First Nations in Manitoba. Timely progress in completing the Framework Agreement will hasten the anticipated social and economic benefits. It will also create a greater level of social and economic certainty for other individuals and organizations that may be affected by the TLE process (e.g., mining claim holders, tourist lodge operators, forestry operators, and municipalities).

What We Found

Some significant progress has been made in meeting TLE commitments. As at August 20, 2008, Manitoba had transferred land to Canada or issued Crown land use permits for 61% (472,598 acres) of the 770,805 acres of Crown land that had been selected under the Framework Agreement by First Nations. This was comprised of:

- 203,249 acres that had been transferred to Canada and set apart as reserve;
- 133,507 acres that had been transferred to Canada and subsequently found to have issues relating to unauthorized structures requiring resolution before conversion to reserve status could occur; and

- 135,842 acres that required surveying by Canada and review of the survey results by the Manitoba Director of Surveys before transfer to Canada could occur.

The Crown land use permits provide the First Nations with exclusive use of the land, subject to the agreed upon accommodation of third party and other interests, although they do not allow for the fuller use of the land that may occur once it has been set apart as reserve by Canada.

Although the issuance of a Crown land use permit for selected Crown land is an important milestone, the final desired outcome is the setting apart of the land as reserve. As at August 20, 2008, a total of 18.5% of the total 1,100,626 acres set out in the 1997 Framework Agreement had been converted to reserve status. This reflected 18% (68 parcels) of the 380 parcels that had been selected by First Nations as of this date.

A federal commitment to transfer 150,000 acres per year to reserve status (under all Manitoba TLE agreements, including but not limited to the 1997 Framework Agreement) was made in August 2006 and supported by Manitoba. This commitment was met for the year ended August 20, 2007, although it was not met for the year ended August 20, 2008. While Manitoba had transferred sufficient acres to Canada for that time period (i.e., 162,285 acres), several of these parcels of land were not set apart as reserve by Canada because issues related to unauthorized structures on the land had not been successfully resolved by the parties to the Agreement.

In reviewing the progress made to date, it was noted that:

- Manitoba was identifying most issues to be resolved on land selections on a timely basis;
- the Department of Conservation had developed a comprehensive database (known as TRELES) to track individual parcel selections, the issues related to each parcel selection, and the dates these issues were identified and resolved;
- ANA had communicated Framework Agreement goals and responsibilities to Provincial departments and was coordinating Manitoba's implementation efforts;
- there was periodic communication with First Nations regarding the status of parcel selections (e.g., correspondence relating to parcel review meetings);
- in concert with the other parties to the Framework Agreement, Manitoba was working towards the development of a documented long term action plan for completing the Framework Agreement; and

- progress in terms of the number of acres of land transferred to Canada by Manitoba and the number of acres of land set apart as reserve was tracked and periodically publicly reported.

At the same time, some considerable challenges remain. Several of the parcels selected to date have significant outstanding issues still requiring resolution. In addition, many parts of the Framework Agreement set out general principles, as opposed to specific rules, leading to sometimes conflicting views between the parties to the Agreement that require on-going discussions in order to reach resolution.

The pace of on-going discussions concerning identified issues is affected by the strength of the management frameworks supporting the parties to the Agreement, as well as a variety of other factors. These other factors include elections and staffing changes at the federal, provincial and First Nations levels, as well as the changing economic, political and legal environments in which discussions are conducted. Some issues remain unresolved even after several years of on-going discussion and attempts to find solutions that will satisfy the concerns of all parties to the Agreement.

Although there are individual roles assigned to each party to the Framework Agreement, they are all interdependent. Therefore, implementation of the Agreement is highly dependent upon the working relationships established amongst the parties and requires the on-going commitment and cooperation of all parties to succeed.

Manitoba could build upon its accomplishments to date and further enhance its future ability to meet its Framework Agreement obligations and related commitments if it were to:

- work with the other parties to the Agreement to develop processes to identify and facilitate a resolution to unauthorized structures in a more timely manner;
- increase ANA's on-going communication and coordination with other Provincial government departments;
- further enhance communication with First Nations by communicating on a more regular basis regarding the current status of all parcel selections, including the status of outstanding issues requiring resolution;
- enhance file management and documentation so as to provide a more easily accessible and complete record of activities conducted to identify and resolve Framework Agreement issues and concerns on individual land selections;
- further develop and document action plans for completing the Agreement;

- communicate to departments a clear process for considering options and developing the views to be adopted during the course of on-going discussions concerning implementation of the Framework Agreement; and
- supplement progress reporting on implementing the Agreement to include information on the number of parcel selections transferred and the significant issues resolved, in addition to the current reporting on the number of acres for which Crown land use permits have been issued, acres transferred to Canada, and acres set apart as reserve.

2.0 Introduction

2.1 Manitoba's Treaty Land Entitlement Obligations to First Nations

Between 1871 and 1910, Canada entered into various treaties with Manitoba First Nations that provided for Canada setting apart a certain amount of land as reserve land based on Band populations; however, several First Nations did not receive their full allocation at that time. Therefore, Canada continues to owe land under the terms of the treaties.

Under the terms of the 1929-1930 *Manitoba Natural Resources Transfer Agreement*, Canada transferred the administration and control of all unoccupied Crown land in Manitoba to the Manitoba government, subject to the condition (amongst others) that Manitoba would return to Canada lands as necessary to enable Canada to fulfill its obligations under the treaties.

A number of Treaty Land Entitlement Agreements have been negotiated in order to satisfy these outstanding treaty land obligations. In total, these Agreements provide for the transfer of 1,425,337 acres of land to Canada to be set apart as reserve for 29 First Nations, comprised of the selection of 1,143,214 acres of Manitoba Crown land and the acquisition of 282,123 acres of other land in Manitoba from willing sellers.

The largest individual Agreement is the Treaty Land Entitlement Framework Agreement, which is an umbrella agreement covering several First Nations. This Agreement was signed in 1997 by the Treaty Land Entitlement Committee of Manitoba Inc. (TLEC) representing 19 First Nations, the Government of Canada, and the Government of Manitoba. After signing, two of the 19 First Nations split, so that the 1997 Agreement now covers 21 First Nations. It sets out the principles for the transfer to Canada of 1,100,626 acres of land in Manitoba to be set apart as reserve for First Nations, comprised of the selection of 985,949 acres of Crown land and the acquisition of 114,677 acres of other land in Manitoba from willing

sellers. As an umbrella agreement, it requires each entitlement First Nation to also sign an individual Treaty Entitlement Agreement in order to proceed. At the time of our audit, 15 of the 21 First Nations had signed individual agreements. Our audit focused on Manitoba's obligations under this Framework Agreement.

There are also eight other Treaty Land Entitlement Agreements in place for Manitoba First Nations. Together, these set out the principles for the transfer to Canada of a total of 324,711 acres to be set apart as reserve for First Nations, comprised of the selection of 157,265 acres of Crown Land and the purchase of 167,446 acres of other land in Manitoba from willing sellers. Our audit work did not extend to these other agreements.

Treaty rights are constitutionally protected under section 35 of *The Constitution Act*, 1982, which recognizes and affirms these aboriginal and treaty rights.

2.2 Importance of Fulfilling the 1997 Treaty Land Entitlement Framework Agreement Obligations

The implementation of the 1997 Framework Agreement fulfills an important constitutional obligation. The land to be transferred has significant historical, cultural, social and economic significance to First Nations. In some cases, the land is expected to help to considerably improve the standard of living of First Nations in Manitoba. It is also noteworthy that, while the Manitoba Crown land to be transferred under the 1997 Agreement represents less than 1% of total Manitoba Crown land, it increases the reserve land in Manitoba existing prior to the Agreement by over 190%.

Timely progress in completing the Framework Agreement will hasten the anticipated social and economic benefits to First Nations. It also creates greater social and economic certainty for other individuals and organizations affected by the TLE process (e.g., tourist lodge operators, forestry operators, mining claim holders, and municipalities).

2.3 Roles and Responsibilities Under the 1997 Framework Agreement

Although there are individual roles assigned to each party to the Framework Agreement, it is important to note that they are all interdependent. Therefore, implementation of the Agreement depends on the working relationships established amongst the parties and requires the on-going commitment and cooperation of all parties in order to succeed.

The first step in converting a parcel of land to reserve status is the selection of Crown land or the acquisition of private land by a First Nation. The Band Council

then notifies Canada of their intention to have the land converted to reserve status by way of a Band Council Resolution. Canada forwards this Band Council Resolution to Manitoba.

Manitoba considers the eligibility of parcels of land selected by First Nations to be converted to reserve status according to the principles for land selection and acquisition set out in the Framework Agreement. Manitoba also identifies all outstanding issues (e.g., third party interests) on those parcels that require resolution before the land can be transferred to Canada to be set apart as reserve land. A third party interest is any interest or right held by a third party to use or occupy the land. Examples of third party interests include leases, permits and mineral interests held by a party other than Canada, Manitoba or the First Nation.

The parties to the Agreement need to resolve all outstanding issues before land can be transferred to reserve status. Manitoba participates in facilitating the resolution of identified issues to various degrees, depending on the circumstances. For example, Manitoba has a public interest to consider when a selected parcel of Crown land includes a winter road, a portage, a designated wildlife management area, or stores of aggregate that may be required for building public roads.

Canada is responsible for performing environmental audits and land survey work. In accordance with Manitoba's *Surveys Act* and *The Crown Lands Act*, the Manitoba Director of Surveys issues all survey instructions for land survey plans prior to the commencement of survey work and must review and approve all survey results.

The Department of Aboriginal and Northern Affairs (ANA) has the lead role in ensuring that Manitoba's Treaty Land Entitlement (TLE) obligations are met. However, several other Provincial departments and agencies complement and support ANA's efforts, including:

- Agriculture, Food, and Rural Initiatives;
- Conservation;
- Culture, Heritage, Tourism and Sport;
- Infrastructure and Transportation;
- Intergovernmental Affairs;
- Justice;
- Manitoba Hydro;
- Science, Technology, Energy and Mines; and
- Water Stewardship.

Together with ANA, Conservation and Justice have significant involvement in TLE matters on a regular basis. Conservation manages Crown lands through its Lands and Geomatics Branch and is responsible for circulating the details of land selections amongst the various Provincial government departments in order to identify any issues relating to the selections. In addition, Conservation is also

involved in issue-specific matters, such as a land selection that has a portage on it or a land selection that may impact a tourist lodge. Justice provides on-going legal advice with respect to all the various provisions of the Framework Agreement.

Other departments and Manitoba Hydro are involved from time to time in the issue-specific matters arising from the selection of specific parcels of land. For example, Infrastructure and Transportation is involved if a land selection has a winter road on it; Science, Technology, Energy and Mines is involved if a land selection has mineral rights issues; Intergovernmental Affairs is involved if a land selection is within or adjacent to a municipality; and Water Stewardship and Manitoba Hydro are involved if a land selection requires an easement to allow Hydro to regulate the flow of water in order to maintain hydroelectric service.

Once all outstanding issues on selected parcels have been resolved, and the related environmental and survey work is complete, Manitoba transfers the land to Canada by order-in-council. Canada then accepts the land and sets the land apart as reserve for the First Nation.

2.4 Specific Treaty Land Entitlement Commitments

On August 22, 2006, Canada committed to setting apart as reserve for the benefit of Manitoba First Nations 150,000 acres of land a year over the next four years, a total of 600,000 acres by August 2010. This commitment was with respect to all TLE Agreements, including the 1997 Framework Agreement and all of the other TLE Agreements. At the time, Manitoba also made a public commitment to work in partnership with Canada in meeting this goal.

On June 28, 2007, Manitoba committed to expediting Provincial work relating to the TLE process, including completing the transfer to Canada of Crown lands selected under the 1997 Framework Agreement within the next four years (i.e., by June 28, 2011).

On May 29, 2008, Manitoba announced that it was on track with respect to completing the transfer to Canada of Crown lands selected under the Framework Agreement within the next three years (i.e., by June of 2011) and that it remained committed to addressing the administrative framework and complexity of the process of transferring land in order to ensure the process moved ahead as quickly as possible.

3.0 Audit Objective and Scope

Our audit objective was to determine whether the Province had developed adequate systems and practices to fulfill its obligations under the 1997 Treaty Land Entitlement Framework Agreement.

Our audit was performed in accordance with the value for money auditing standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit was conducted between October 2007 and November 2008 except as otherwise noted. It included review and analysis of the Treaty Land Entitlement Framework Agreement, relevant studies, reviews, reports, discussion papers, files, management information systems, and planning and other documents obtained from ANA and other Provincial government departments and agencies with TLE responsibilities, as well as documents supplied by parties to the Agreement and others with key interests. It also included discussions and interviews with staff from ANA and other Provincial government departments and agencies, Agreement partner representatives, selected First Nation representatives, and selected representatives of third party interest groups.

We did not audit the other parties to the Agreement, First Nations or any other organizations involved in the TLE process.

4.0 Detailed Audit Observations

4.1 Progress in Meeting Obligations

Some significant progress has been made in meeting Manitoba's obligations under the 1997 TLE Framework Agreement but some considerable challenges remain.

As at August 20, 2008, Manitoba had issued Crown land use permits for 61% (472,598 acres) of the 770,805 acres of Crown land that had been selected by First Nations.

When measuring progress in meeting its 1997 Framework Agreement obligations, Manitoba focuses on the Crown land selected to date, rather than the total 1,100,626 acres of land to be transferred to Canada and set apart as reserve under the Framework Agreement. This reflects Manitoba's greater role with respect to Crown land selections (as opposed to the acquisition of other land from willing sellers) and recognizes that Manitoba's primary responsibilities commence with the selection of land by First Nations.

Manitoba also views its Framework obligations for an individual land selection as essentially complete once all the issues originally identified have been resolved and the land is ready to be surveyed by Canada, since at this stage Manitoba issues the First Nation a Crown land use permit for the land selection. This permit provides the First Nation with exclusive use of the land, subject to the agreed upon accommodation of third party and other interests, although it does not allow for the fuller use of the land that may occur once it has been set apart as reserve by Canada. As of August 20, 2008, the 472,598 acres of Crown land for which Manitoba had issued Crown land use permits were comprised of the following:

- 203,249 acres that had been transferred to Canada and set apart as reserve;
- 133,507 acres that had been transferred to Canada and subsequently found to have issues relating to unauthorized structures requiring resolution before conversion to reserve status could occur; and
- 135,842 acres that required surveying by Canada and review of the survey results by the Manitoba Director of Surveys before transfer to Canada could occur.

Although the issuance of a Crown land use permit for selected Crown land is an important milestone, the final desired outcome is the setting apart of the land as reserve. As at August 20, 2008, a total of 18.5% of the total 1,100,626 acres set out in the 1997 Framework Agreement had been converted to reserve status. This reflected 21% (203,249 of 985,949 acres) of the Crown land to be selected and

0.1% (158 of the 114,677 acres) of the land to be acquired from willing sellers. This also represented 18% (68 of the 380 parcels) that had been selected as of that date.

The federal commitment, supported by Manitoba, to transfer 150,000 acres per year to reserve status (under all Manitoba TLE agreements, including but not limited to the 1997 Framework Agreement) was met for the year ended August 20, 2007. However, the commitment was not met for the year ended August 20, 2008. While Manitoba had transferred sufficient acres to Canada for that time period (i.e., 162,285 acres), several of these parcels of land were not set apart as reserve by Canada because issues related to unauthorized structures on the land had not been successfully resolved by the parties to the Agreement.

At the time of our audit, several of the parcels selected to date still had some significant issues requiring resolution. Based on our review of past experience, facilitating and negotiating resolution of issues has often taken many years. Some issues remain unresolved even after several years of on-going discussion and attempts to find solutions that will satisfy the concerns of all parties to the Agreement. Section 4.7 describes some of these issues in greater detail and Section 4.8 describes the use of the dispute mechanisms set out in the Framework Agreement in greater detail. It is not possible for us to predict whether or not these issues will be resolved in a timely manner.

Parcel selections not yet transferred to Canada have been colour-coded by ANA and Conservation as "green, amber, or red" to reflect the level of difficulty associated with resolving the related outstanding issues. As of August 20, 2008, 32% of the parcels were "green"; 38% were "amber" and 30% were "red".

In addition, at the time of our audit, six First Nations with a total entitlement of 137,529 acres had not yet signed the individual agreements required under the umbrella Framework Agreement in order to commence the process of selecting and/or acquiring land. The Framework Agreement states that an entitlement First Nation shall have no right to receive any benefit from or participate in the Agreement unless the process of obtaining community approval for the individual agreement has been initiated within 18 months of the date the Framework Agreement was signed by Canada, Manitoba and TLEC. However, in practice, the parties to the Agreement have allowed First Nations to initiate the process beyond the stated deadline.

The pace of on-going discussions concerning parcel issues can be affected by the strength of the management frameworks supporting the parties to the Agreement, as well as a variety of other factors. For example, elections and staffing changes at the federal, provincial and First Nations levels may cause delays in decision-making and/or affect views adopted in on-going discussions. Also, Framework Agreement discussions may be affected by the status of other Manitoba First

Nation agreements or issues, as well as the changing economic, political and legal environments in which the discussions are conducted.

4.2 Identification of Parcel Selection Issues

Issues related to parcel selections were being identified on a timely basis and in accordance with the Framework Agreement, except for the identification of unauthorized structures.

The Agreement requires Manitoba to consider the eligibility of the First Nation selection or acquisition in accordance with the Principles set out in the Agreement. Manitoba is then required to provide a reply to Canada and the First Nation within 45 to 60 days of receiving the selection or acquisition documents from Canada.

Conservation circulates the details of the selection amongst the government departments and agencies responsible for identifying any issues on the selection that would need to be resolved. This includes:

- *Agriculture, Food and Rural Initiatives*: to identify if there are any agricultural leases on the selection or if the selection includes land in a community pasture.
- *Aboriginal and Northern Affairs*: to identify if the selection includes land with known northern community issues.
- *Conservation*: to initially verify that the selection is Crown land and identify registered third party interests and regional interests and then to identify if the selection includes land in a Provincial park, ecological reserve, wildlife refuge, wildlife management area, public shooting ground, or forest plan, as well as to identify if the selection might impact a tourist lodge.
- *Culture, Heritage, Tourism and Sport*: to identify if the selection includes land with a known heritage site and to identify potential tourism impacts from the selection of TLE land with any existing tourist lodges.
- *Infrastructure and Transportation*: to identify if the selection includes land with Provincial roads bordered by or enclosed in the selection, airports used by Manitoba, or aggregate quarries currently or potentially required for Provincial road building.
- *Intergovernmental Affairs*: to identify if the selection includes land in or near municipalities or communities.
- *Science, Technology, Energy and Mines*: to identify if the selection includes land with mining claims or mineral interest holders.
- *Water Stewardship/Manitoba Hydro*: to identify if the selection includes land bordering upon navigable, non-navigable, or developed waterways or land used by, or planned to be used by, a public utility.

We found that Manitoba, through the Department of Conservation, usually managed to circulate the selections amongst the relevant government departments and Manitoba Hydro, and identify all outstanding issues that would require resolution before the land could be transferred to Canada, within the 45-60 day time frame.

The Crown Lands Act does not generally allow any use or occupation of Crown land unless authorization has been granted and registered through mechanisms such as leases, permits, or licenses. We noted problems with the identification of unauthorized structures on some parcel selections. These unauthorized structures were not registered interests. They ranged from trapper's cabins of nominal value to permanently occupied principal residences of significant value. At the time of our audit, unauthorized structures were usually first noted through the work conducted by federal field staff performing environmental audits and land survey work, as opposed to resulting from a specifically defined process performed by Manitoba to identify unauthorized structures. Once identified, the parties to the Agreement then looked for a resolution to the unauthorized structures issue that would allow the structures to remain on the land.

Identification of unauthorized structures as early in the TLE process as possible, in combination with a defined process for accommodating or extinguishing these unregistered interests once they have been identified, would enhance Manitoba's ability to meet its obligations under the 1997 Framework Agreement. At the time of our audit, Manitoba was beginning consideration of possible methods of earlier identification and the parties to the Agreement were discussing a draft pre-transfer use agreement that might accommodate these interests once identified.

We recommend that ANA and Conservation work together with the other parties to the Agreement to develop processes to identify and facilitate a resolution to unauthorized structures in a timely manner.

4.3 Communication and Coordination with Other Government Departments

ANA communication and coordination with other government departments could be further enhanced.

The Framework Agreement requires Manitoba to *"use its best efforts to provide on-going orientation of departmental personnel to the requirements of the Agreement to encourage and foster a positive and productive working relationship between and among its personnel...."*.

We found that the majority of departmental staff members we interviewed had never received orientation to the requirements of the 1997 Framework Agreement. Some staff members could recall ANA orientation sessions that had taken place several years ago when the Agreement was first signed. In addition, some staff noted that, over the years, they had taken the initiative to educate themselves with respect to treaty land entitlement matters. Several staff members indicated that training and orientation related to treaty land entitlement and the Framework Agreement would be helpful to them and/or that there was a need to repeat the training and orientation that had originally been provided several years ago by ANA.

We were told by government personnel that, when the Framework Agreement was first put in place, ANA made a concerted effort to go out to departments and discuss the TLE initiative with all staff with TLE responsibilities. In addition, ANA informed us that on-going periodic meetings are held with other government departments to discuss the TLE initiative in general, as well as issues related to specific parcel selections, although these meetings are not always documented. ANA also noted that other departments have a role to play in ensuring that TLE information provided by ANA is appropriately shared within their individual departments.

While representatives from ANA, Justice and Conservation meet regularly to discuss on-going TLE matters, some staff members in departments with smaller TLE involvement meet less frequently to discuss more issue specific matters on an ad hoc basis. As a result, we found that some Provincial department personnel with TLE related responsibilities believed that ANA communication and coordination with other government departments could be improved. Some staff felt unclear as to ANA's role and the role of other government departments. Some also felt insufficiently informed about parcel selections, priority parcels, parcel amendments, and/or next steps, if any, to be taken to help resolve identified issues and competing interests.

A greater awareness within the various departments of ANA's role and Manitoba's TLE commitments and priorities might contribute to more timely completion of the TLE process.

We recommend that ANA strengthen its communication and coordination with other government departments with TLE responsibilities. This should include:

- **on-going orientation of departmental personnel with TLE responsibilities to the historical background and significance of treaty land entitlement and the requirements of the Framework Agreement;**
- **regular meetings and updates between ANA and other departments with TLE responsibilities concerning Framework Agreement priorities, issues, and action plans; and**
- **clarification of the respective roles and responsibilities of ANA and other government departments.**

4.4 Communication with First Nations

Manitoba communications with First Nations could be further enhanced.

The Framework Agreement requires Manitoba to *"provide promptly to Canada and TLEC relevant information and materials required to facilitate the fulfillment of the terms of the Agreement"* and to *"foster a positive and productive working relationship between and amongst its personnel, TLEC, Canada, and the Entitlement First Nations"*.

We noted that First Nations were sometimes receiving limited information about the status of selected parcels. We expected that Manitoba would work with TLEC to ensure that each First Nation was sent correspondence on a regular periodic basis outlining parcel selections received to date and the current status of those parcel selections. However, while we found some periodic communication between ANA and First Nations on a variety of matters (e.g., correspondence summarizing the results of parcel review meetings), at the time of our audit we did not find regular on-going status reporting of this nature.

Subsequent to the timeframe covered by our audit, Conservation was in the process of beginning to formally offer a variety of different reports to the parties to the Agreement, such as reports showing the individual parcel selections for each First Nation and the resolved and outstanding issues on each parcel

selection. These reports were to be generated from the Treaty Land Entitlement System (TRELES) developed by Conservation, which is discussed in more detail in Section 4.5.

We recommend that ANA work with TLEC to communicate on a regular periodic basis with each First Nation with respect to parcel selections received, the current status of those parcel selections, and actions completed and in progress to address issues arising from the parcel selections.

4.5 Management Information Systems

Existing management information systems provide valuable information; however, further improvement could enhance TLE implementation efforts.

Conservation has developed a computer application called the Treaty Land Entitlement System (TRELES) that provides and tracks information on the status of all land selections made under the Framework Agreement, from the time the Band Council Resolution selecting land is received up until the time the land is transferred to Canada. TRELES includes a description of the land selected, as well as a listing of all applicable issues identified and the dates the issues are resolved. TRELES also includes a digitized mapping capability that allows the input of selections and known encumbrances into a map-based format for analysis and display purposes. In addition, TRELES has the ability to provide periodic status reports on the parcel selections.

We noted the valuable role that TRELES had played to date in the implementation of the Framework Agreement, as well as the significant efforts of the staff in the Lands and Geomatics branch of Conservation in keeping TRELES up to date and running smoothly.

The Lands and Geomatics Branch of Conservation also keeps a paper filing system, with a separate file for each parcel of land selected and files for selections from a specific First Nation grouped together. These files included all key documents showing the final decisions made for each parcel selection. However, they did not include all supporting documentation for the process followed by all the various departments in making the final decisions on the specific issues related to each parcel, or all documentation related to on-going discussions concerning unresolved issues. Where Conservation was involved in specific parcel issues (e.g., portages or tourist lodge impacts), related supporting documentation was kept by the applicable departmental area involved.

Files maintained by the Agreements Management branch of ANA were in paper format, with a separate file for each First Nation. There were no separate files for the Framework Agreement issues for each First Nation. Since the Agreements Management branch is responsible for negotiating and implementing several agreements other than the Framework Agreement with First Nations, this meant that information on specific parcel selections under the Framework Agreement were difficult to locate and retrieve.

We expected to find documents that would show the process by which the Province was attempting to facilitate a resolution to identified issues and to remove barriers to progress on parcel selections. This would have included the details of meetings and discussions with other parties to the Agreement and others with key interests, as well as analyses of various options considered. However, not all meetings and discussions of this nature were documented. In addition, existing documents had not always been retained and/or filed in a centralized fashion that made them easily accessible. Both the length of time elapsed since the Agreement was first signed and the many different departments involved in the Framework Agreement contributed to the less than complete file documentation.

Complete, easily accessible file documentation may contribute to more timely completion of Framework Agreement implementation, particularly in situations where there are staff retirements or there is staff turnover.

We recommend that ANA improve its file management and documentation for the 1997 TLE Framework Agreement. File documentation should be easily accessible for all parcel selections and departments should forward to a central registry a complete record of the meetings and discussions held to identify issues and concerns, examine alternatives, and facilitate resolution of identified issues and concerns.

4.6 Planning

ANA has been working towards developing a documented and prioritized long term action plan.

We expected that, as the lead department, ANA would develop and periodically update planning documents detailing the following:

- the number of parcel selections to be processed;
- the most common significant issues impeding progress on selected parcels of land, as well as options and strategies for facilitating resolution to these issues and removing barriers to progress;

- the resources required to resolve issues and remove barriers to progress on a timely basis; and
- the communication and coordination required with other parties to the Agreement, related departments and others with key interests.

We also expected that ANA would have a process for prioritizing the parcels and issues to be addressed in order for Manitoba to meet its public Framework Agreement commitments and all Framework Agreement obligations. In addition, given the interdependent roles and responsibilities of the Framework Agreement parties, we expected that planning would be done in consultation with both TLEC and Canada.

We noted that, in July 2007, the Deputy Minister of ANA wrote to all the other Manitoba Deputy Ministers to highlight the priority being given to meeting Manitoba's TLE obligations and to ensure that appropriate focus was placed on the timely resolution of issues involving Provincial government departments in the TLE process. This letter also stated that ANA would be working with Conservation to develop an "annual plan" which would highlight the parcels anticipated to be transferred to Canada.

Planning documents provided to us by ANA at the time of our audit consisted primarily of listings of parcels being worked on with respect to meeting the current year's commitment to transfer 150,000 acres per year. These listings were not specific to the Framework Agreement and showed only very general information about the status of each parcel (i.e., whether it was in the survey stage or order-in-council stage or if unregistered interests had been identified subsequent to the Manitoba order-in-council).

As previously noted, Conservation can generate TRELES reports showing each parcel selection, the issues requiring resolution for that parcel selection before the land can be transferred, and the degree of difficulty associated with resolving all identified parcel issues (coding the degree of difficulty as green, amber or red). However, these reports cannot be considered action plans since they contain no information with respect to how resolution to the identified issues is to be facilitated, nor do they show the status of any on-going attempts at facilitating resolution.

We noted that both ANA and Conservation have received some additional staffing resources in past years to assist with implementation of the Framework Agreement. However, there has been no analysis performed to determine if these resources, together with the resources in other Provincial government departments with TLE responsibilities, will be sufficient to meet the commitment to complete the transfer to Canada of Crown lands selected under the Framework Agreement by June 28, 2011.

For example, we noted that staffing issues in the Office of the Director of Surveys, which is housed within Conservation, were sometimes causing delays in issuing survey instructions and reviewing the results of survey work conducted by Canada and unduly slowing the TLE process. We were provided with examples of cases where it took up to 60 days to issue survey instructions and more than a year to review and approve survey results, largely as a result of staffing problems. Conservation noted the difficulties in attracting survey staff given the high levels of market demand for surveyors and the corresponding high salary expectations for experienced survey staff.

The Framework Agreement states that Manitoba should use its best efforts to *"ensure that appropriate personnel are assigned to fully and effectively discharge Manitoba obligations"*, as well as to *"ensure that any Manitoba departmental policy, system or practice impeding the timely implementation of the Agreement is reviewed and revised"*.

Recognizing the need for consultation and action planning, the parties to the Agreement participated in an initial joint strategic planning exercise in the fall of 2008. ANA reported that this is an on-going initiative being coordinated by the independent Chairperson of the Framework Agreement's Implementation Monitoring Committee (IMC). More information about the IMC is provided in Section 4.8.

The continued development, in consultation with the other parties to the Framework Agreement, of a comprehensive action plan outlining how Manitoba will manage its Framework Agreement activities so as to process selected parcels within a reasonable period of time may contribute to Manitoba's ability to meet its TLE commitments and Framework Agreement obligations.

We recommend that, in conjunction with the other parties to the Framework Agreement, ANA develop and document annual and multi-year action plans to guide implementation of the 1997 Framework Agreement.

4.7 Resolving Identified Issues

Progress in implementing the Framework Agreement has been impeded by difficulties in resolving identified issues and conflicting views regarding certain provisions of the Agreement.

In some cases, the identified issues on the parcels of land, in conjunction with sometimes conflicting views regarding certain provisions of the Framework Agreement, have proven extremely difficult to resolve. As a result, progress in processing parcel selections with these issues has often been very slow. Given that many parcels have more than one issue to resolve, the cumulative effect of unresolved issues has caused significant delays in Manitoba's ability to transfer land to Canada.

We noted that the language used in the Framework Agreement is sometimes subjective. For example, the direction given to guide the actions of the parties to the Agreement is sometimes stated using phrases such as "will generally" or "shall use its best efforts", without clarifying these phrases further. In addition, some terms used in the Framework Agreement, such as "competing considerations", are not defined anywhere in the Agreement. We were told by all parties to the Agreement that this was necessary in order to arrive at a Framework Agreement that all parties could agree to after a reasonable period of negotiation. However, this also means that, in some cases, the Framework Agreement needs to be viewed as a set of general principles as opposed to a set of specific rules. This has created a need for on-going interpretation and discussion in some areas, despite the existence of a detailed Framework Agreement that is over 250 pages long.

In order to facilitate resolution of identified issues and conflicting views of certain provisions of the Framework Agreement, we expected that there would be a Provincial process for arriving at Manitoba's view on each of the major issues requiring on-going discussion. We considered this to be an important element in balancing identified concerns with the overall objective of implementing the Framework Agreement.

We found that Manitoba had sometimes prepared discussion papers to support its view on some specific issues (e.g., portages and parcels less than 1,000 acres). In addition, we noted that Conservation had prepared some departmental discussion papers to support their views on certain tourist lodge matters. However, we found that ANA and the other related departments were unable to clearly demonstrate a defined process for considering options and developing Manitoba's view with respect to what would be proposed or agreed to during on-going discussions.

We recommend that ANA, in conjunction with other departments, implement a clear process for considering

options and developing Manitoba's view on major issues requiring on-going discussion.

A brief description of some of the more significant and common parcel issues that either remain unresolved and/or have taken a lengthy period of time to resolve are detailed below.

Parcels of land less than 1,000 acres

The Framework Agreement states that *"an entitlement First Nation will generally select parcels of land of 1,000 acres or more in area"*, although the Agreement provides for an exception where the purpose of a selection is for historical, cultural, economic or social reasons. Upon receipt of a written request from Manitoba, the First Nation is to provide to Manitoba a written statement outlining the reasons for a selection of less than 1,000 acres. After considering this written statement, Manitoba may consider and set out in writing to the First Nation "other competing considerations" relating to the selection that Manitoba and the First Nation then need to make a reasonable effort to address.

Based upon the wording of the Agreement, Manitoba expected the selection of parcels less than 1,000 acres to be a relatively infrequent occurrence. However, 64% of the 443 land selections that had been made as at September 2007 were less than 1,000 acres. The number of parcels selected has a significant impact on the resources required to implement the Framework Agreement.

By attempting to consider each parcel selection on its own merits and requesting and receiving additional information, ANA has gradually reduced the number of parcels of less than 1,000 acres that are of concern to Manitoba, but some parcels still present challenges. For example, there are conflicting points of view between the parties to the Agreement as to whether or not Manitoba Hydro easements and related costs (including the cost of determining and surveying the easement line), as well as tourist operation impacts, are "competing considerations". The Framework Agreement does not define "competing considerations".

Several of the parcels less than 1,000 acres also have other issues requiring resolution. For example, several of these parcels also have greater than 50% of the land selected below the easement line (the line marking the inland boundary of the required hydro easement). There are conflicting points of view as to whether or not land selections are eligible in such circumstances.

Parcels of land near tourist lodge operations

The Framework Agreement recognizes that land selections adjacent to, or near, a tourist lodge and/or its outcamps may impact the operation of the tourist lodge and that this impact may be considered when determining the eligibility of a selected parcel of land. The Framework Agreement also states that certain

selections should have more impact on a tourist lodge and are therefore less likely to be eligible for selection, including selections adjacent to:

- a smaller body of water;
- a body of water which may, upon reasonable examination, have difficulty sustaining additional development; or
- a body of water on which the tourist lodge has been established and is being operated as a "pristine wilderness experience" facility.

We noted that, in order to assess impacts, Conservation sometimes sends questionnaires to affected tourist lodge operators requesting information concerning the type of service offered on the lake; the number, type and value of facilities on site; the number of guests; and the employment and other economic activities resulting from the lodge operations. The questionnaires also ask if there are any specific issues or concerns that Conservation should be aware of. In addition, Conservation asks the First Nation to provide information concerning the reason for the selection and the intended use of the selected parcel of land. However, these tourist lodge questionnaires were only used in those cases where Conservation felt the tourist lodge was being operated as a "pristine wilderness experience" facility.

Documentation we received from Conservation indicated that several factors should be considered in assessing eligibility of a selection to be set apart as Reserve land:

- size of the selection;
- the type of lodge development;
- the distance from selected parcels to the lodge and effected First Nation community;
- the investment in the lodge;
- the stated purpose and proposed use of the land selection by the First Nation;
- management quality of the lake;
- operation as a "pristine wilderness experience" facility;
- other uses of the lake;
- size of the lake; and
- lake sustainability.

However, while there is a process to be followed to collect this information, there is no defined framework to be used to evaluate the responses. Conservation was unable to provide us with adequate documentation demonstrating how they had assessed and considered each of these factors in determining that some selections with tourist lodge impacts were eligible, while others were ineligible.

We noted conflicting points of view between the parties to the Agreement as to whether or not, as part of the process of determining the eligibility of parcel selections with tourist lodge issues, the Province is obligated by the Agreement to conduct a formal tourist lodge impact study to be shared with the First Nation and TLEC.

Parcels of land with winter roads

Some parcel selections have winter roads on them. These winter roads facilitate the hauling of freight to northern and remote communities, and provide residents with temporary inter-community travel, as well as road access to the rest of the Province.

The Framework Agreement states that land selections will ordinarily include winter roads, but that Manitoba is entitled to retain an easement for the construction and maintenance of winter roads on selected parcels of land. However, government officials in the Department of Infrastructure and Transportation were of the view that it was necessary to exclude the winter roads from selected land because they did not believe that easements would provide sufficient unrestricted access to the roads or allow sufficient highway authority to be exercised for such matters as setting speed limits.

In some cases, an inability to resolve this issue impeded progress on some parcel selections for several years. However, more recently, Infrastructure and Transportation has undertaken an initiative to relocate winter roads off waterways to firmer ground, where possible, in order to address safety concerns, reduce construction difficulties, and address environmental concerns. This has resulted in the removal of the winter road issue from most affected parcel selections. As of November 6, 2008, winter road issues had been resolved for twelve parcels of land totaling 23,744 acres and only remained unresolved for two parcels of land totaling 5,011 acres.

Parcels of land with Manitoba Hydro issues

The Framework Agreement recognizes that selections may be made that include land along waterways where Manitoba Hydro may need to regulate water levels and flood land for the purposes of creating hydro-electric power. These selections require easements and the determination and surveying of easement lines, which are the lines marking the area of land to which water levels may extend under the easement.

Although most survey work associated with the Framework Agreement is the responsibility of the federal government, the Agreement states that Manitoba is responsible for surveying Manitoba Hydro easement lines. Following discussion

between the Province and Manitoba Hydro, it was agreed that the Province would pay for the related costs of the required aerial photos.

The Framework Agreement states that a hydro easement may be in one or more forms agreed to by the Parties to the Agreement and envisioned the negotiation of agreed forms. As such, there is an Agreed Forms Committee, with representatives from all parties to the Framework Agreement. However, to date, the parties have been unable to come to a consensus on an agreed form for hydro easements. There are 78 parcel selections totaling approximately 66,000 acres that require a hydro easement and cannot be transferred to Canada to be set apart as reserve land if this issue cannot be satisfactorily resolved. Of these, 42 parcels totaling approximately 8,900 acres also have unresolved questions or issues as to eligibility that would need to be settled before addressing the hydro easement issue.

The Framework Agreement also sets out sites where the land may be "physically required" by Manitoba Hydro for hydro-electric development or water diversion projects. For each of these sites, Manitoba or Manitoba Hydro may require up to 10 square miles for specific items listed in the Agreement (e.g., dams, dikes, access roads, buildings, etc.). All land over the 10 square miles is to be available for selection. In some cases, there are differing points of view between the parties to the Agreement with respect to the reasonableness of the area of land considered to be physically required.

As at November 6, 2008, there were nine parcels of land totaling 5,875 acres with unresolved issues with respect to lands physically required by Manitoba Hydro.

Parcels of land with portages

The Framework Agreement provides for the selection of Crown Land bordering on navigable waters. These lands occasionally include portages to assist individuals in avoiding navigational obstacles, such as rapids, or in moving between lakes.

The Department of Conservation views access to these portages as a public interest that should be protected. Therefore, in some cases, Conservation has negotiated with the First Nation to exclude the portage land from the selection. However, in cases where this has not been found to be a workable solution, Conservation is of the view that an easement agreement is required to maintain public access to the portage. However, there have been difficulties in negotiating the form of easement. In July 2008, Manitoba completed work on a draft portage easement agreement to be discussed with the other parties to the Agreement.

Conservation does not conduct any formal study or analysis to determine the frequency of use of the portages for which they are trying to protect public accessibility, relying instead on regional knowledge and published canoe routes.

There have been a total of 22 land selections involving approximately 65,022 acres of land with 29 portage issues identified since the signing of the Framework Agreement in 1997. In some cases, there are other issues to resolve on these parcels as well. However, at the time of the audit, we noted that there were 10 selections totaling 17,348 acres with only the single portage issue to resolve.

Parcels of land within a municipality

The Framework Agreement provides direction for when a First Nation selects or acquires land in a municipality, including setting out a process to be followed if there is a need to negotiate a municipal development and services agreement. A municipal development and services agreement may be required if the First Nation intends to use the infrastructure of the municipality or requires services provided by the municipality.

The Framework Agreement states that a selection or acquisition will not be ineligible to be set apart as reserve land due to the failure or inability of a First Nation to satisfy the concerns of a municipality, the failure of the First Nation and the municipality to enter into a municipal development and services agreement, or a claim by the municipality alleging a loss of tax revenue. The Agreement also specifically states that Manitoba is to use its best efforts to assist First Nations and municipalities in the negotiation of issues relating to municipal development and services agreements.

We noted that ANA, in conjunction with Intergovernmental Affairs, has developed a reference manual for municipal development and services agreements. This reference manual sets out issues that each party may wish to address in a municipal development and services agreement. The manual is detailed and provides much valuable information.

In addition, we noted that Manitoba has established a compensation program for municipalities that provides up to five times their net tax loss. As of May 2008, a total of $70,846 had been paid to five municipalities under this program.

We also noted that there continues to be a demand for Provincial assistance with respect to municipal development and services agreements and related issues. Therefore, additional Provincial support to First Nations and municipalities with respect to the negotiation of issues relating to municipal development and services agreements may be required.

At the time of our audit, Manitoba had recently initiated a working group to examine inter-departmental processes and strategies for addressing First Nation and Municipality relationships. Successfully addressing these relationships will assist in completing implementation of the Framework Agreement in a timely manner.

Parcels of land with third party interests

The Framework Agreements states that third party interests (such as, but not limited to, mining and mineral interests) must be resolved before selected land can be set apart as reserve land. The Agreement identifies several methods as possible means of resolving third party interests, providing the third party agrees:

- the First Nation may purchase the interest from the third party;
- the third party consents to cancellation of the interest;
- the third party maintains the interest until it expires;
- if the interest is a license or permit issued by Manitoba, then Manitoba may withdraw, cancel or not renew the interest upon a determination that the third party is not using the land for the purpose intended or failed to meet any conditions of the license or permit;
- the interest may be replaced with a like interest that will be legal subsequent to the land being set apart as reserve; or
- any other way acceptable to all parties to the Framework Agreement and the holder of the third party interest.

As of November 6, 2008, there were 275 unresolved third party interests on 65 parcels of land totaling 122,836 acres. These included mining claims, mineral leases, quarry claims, snowmobile and logging trails, and registered structures. Of these, 116 represented mineral leases on just three parcels.

Departmental staff notify the third party interest holder that the land on which they hold the third party interest has been selected under the Framework Agreement and that the First Nation may be contacting them with respect to resolution of the third party interest.

Some departmental staff told us that they were reluctant to take an active role in helping to facilitate a resolution to third party interests because they felt it would be difficult to maintain a neutral position that would not be seen to unduly favour either the First Nation or the holder of the third party interest, while at the same time also protecting the existing interest.

We noted that ANA representatives have attended TLEC workshops on third party interests in order to make presentations and provide information on the processes available for resolving third party interests.

We also noted that First Nations have access to federal funding totaling $8.9 million that is available for resolving third party interests under the Framework Agreement. These funds are administered by TLEC.

4.8 Dispute Resolution Mechanisms

Dispute resolution mechanisms set out in the Framework Agreement have not always been fully utilized.

The Framework Agreement sets out a number of different mechanisms for dispute resolution, including use of the Implementation Monitoring Committee (IMC) and the Senior Advisory Committee (SAC), as well as fact-finding, mediation, and both binding and non-binding arbitration.

The IMC has two representatives appointed by TLEC, one representative appointed by Canada, one representative appointed by Manitoba, and an independent Chairperson recommended by the other members and appointed by the SAC. Any party to the Framework Agreement can refer an issue or matter in dispute to the IMC for resolution and the IMC then seeks to resolve issues by consensus. At times, the IMC has also made recommendations to the parties to the Agreement.

We noted that the IMC had previously experienced difficulties effectively facilitating resolution of referred issues and monitoring on-going Framework Agreement progress. More recently, the independent Chairperson had:

- completed a listing of all outstanding issues referred to the IMC and their status;
- issued concept papers to assist in the facilitation of some long outstanding issues;
- encouraged better relations and joint planning between parties to the Agreement; and
- issued an annual progress report.

ANA reports that it expects this renewed effort by the IMC and the parties to the Agreement will contribute significantly to implementation efforts.

The SAC is comprised of the TLEC President, the Regional Director General of the Manitoba Region or the Assistant Deputy Minister of Indian and Northern Affairs Canada, and the Deputy Minister of ANA. If the IMC is unable to resolve an issue, it can be referred to the SAC. If the SAC cannot resolve an issue, the IMC may then use fact finding by an adjudicator, mediation or arbitration. We were advised by ANA that IMC has infrequently utilized these available dispute resolution mechanisms, having only once sent an issue to arbitration.

4.9 Monitoring and Reporting Performance

Monitoring progress in implementing the Framework Agreement could be enhanced by reporting additional performance indicators.

ANA and Conservation monitor progress with respect to the number of acres for which Crown land use permits have been issued and the number of acres transferred to Canada, as well as the number of acres converted by Canada to reserve land. Progress on acres transferred to Canada and acres converted to reserve land (annual and cumulative) is periodically communicated to the public, both through news releases and ANA's annual report.

A more comprehensive picture might be conveyed if ANA also reported the number of parcels of land successfully transferred relative to the total number of parcels of land selected. Depending on the size of an individual parcel, it is possible to transfer only a small number of parcels in a year in order to successfully meet the commitment made by Canada, and supported by Manitoba, to transfer 150,000 acres annually.

We noted that, although there is a commitment by Manitoba to complete the transfer of land to Canada under the 1997 Framework Agreement by June 28, 2011, TLE progress is often reported in summary fashion for all nine TLE agreements in Manitoba and not specifically for the 1997 Framework Agreement.

Although the issues requiring resolution on each individual parcel of land may be viewed as unique, there are some issues affecting several parcels. An example of this would be the lack of an agreed form for hydro easements. We noted that there is no reporting of progress in resolving these kinds of major issues, even though their resolution is critical to continuing to meet the target of transferring 150,000 acres per year and completing the transfer of land to Canada under the 1997 Framework Agreement by June 28, 2011.

ANA and Conservation provided us with copies of the status reports provided by them to senior officials during the timeframe of our audit. The status reports showed total acres selected, confirmed eligible, approved for survey, transferred to Canada by order-in-council and designated as reserve land by Canada for each First Nation.

We noted there was other useful performance information available in the departments that was not being included in the status reports. This included the number of parcels selected and transferred; the number of parcels and acres impacted by each of the major issues still requiring resolution; progress in resolving the major issues impeding successful completion of the TLE process; and resource issues, such as the staffing issues in the Director of Surveys Office. The

status reports also did not include any reporting of the information available with respect to the number and percentage of parcels colour-coded as green, amber or red (reflecting the level of difficulty associated with resolving related outstanding issues).

Ultimately, a Legislative Assembly that is well-informed about the status of the implementation of the Framework Agreement, including both successes and unresolved issues and the barriers to successful implementation, is in the broad public interest.

We recommend that ANA further develop its internal and public reporting of progress in implementing the 1997 Framework Agreement.

5.0 Departmental Response

Manitoba Aboriginal and Northern Affairs (ANA) appreciate the efforts of the Office of the Auditor General in reviewing and providing recommendations with respect to Manitoba's obligations under the 1997 Treaty Land Entitlement Framework Agreement (TLE Framework Agreement). The analysis of this complex Agreement and recommendations made by the Office of the Auditor General provide valuable assistance to the department toward its commitment to expedite the transfer of Treaty Land Entitlement (TLE) selections to the government of Canada to be set apart as Reserves for the Entitlement First Nations (EFNs).

The following are highlights on the progress the Departments of Aboriginal and Northern Affairs and Manitoba Conservation (Conservation) have made in response to the advice received during the audit process.

- *The issue of unauthorized structures on land selections has been largely addressed through pre-transfer use agreements developed by Indian and Northern Affairs Canada (INAC).*
- *ANA continues to strengthen its working relationship with other departments and personnel with TLE Framework Agreement responsibilities through TLE presentations, internal discussions on department-specific TLE issues, and through joint, cooperative discussions with EFNs, municipalities and other stakeholders.*
- *Conservation and ANA provide regular TLE updates to the Aboriginal Issues Committee of Cabinet (AICC) and Cabinet. Provincial News Releases are issued following transfers of land to Canada for EFNs.*
- *The Deputy Ministers of ANA and Conservation meet monthly to review progress and issues that may need senior level involvement or follow-up with INAC, TLEC and EFNs.*
- *Conservation has developed Treaty Land Entitlement System (TRELES) reports which are currently provided to TLEC, INAC and EFNs at regular selection review meetings and will be distributed on a quarterly basis to all parties.*
- *ANA and Conservation have developed a five-year Strategic Plan for TLE along with the development of an annual implementation plan. In addition, Manitoba, Canada and the Treaty Land Entitlement Committee (TLEC), through the Implementation Monitoring Committee (IMC), have begun development of a strategic plan.*
- *The Strategic Plan and implementation plan will include actions to address recommendations in the audit report.*

Recommendation 1

We recommend that ANA and Conservation work together with the other parties to the Agreement to develop processes to identify and facilitate a resolution to unauthorized structures in a timely manner.

Response from Officials

- *ANA works with Conservation to identify known unauthorized structures after selection of land and prior to environmental audits by the federal government.*
- *INAC has developed a pre-transfer use agreement and INAC and some EFNs have utilized the agreement to resolve unauthorized structures.*

Recommendation 2

We recommend that ANA strengthen its communication and coordination with other government departments with TLE responsibilities. This should include:

- on-going orientation of departmental personnel with TLE responsibilities to the historical background and significance of treaty land entitlement and the requirements of the Framework Agreement;
- regular meetings and updates between ANA and other departments with TLE responsibilities concerning Framework Agreement priorities, issues, and action plans; and
- clarification of the respective roles and responsibilities of ANA and other government departments.

Response from Officials

- *ANA continues to strengthen its working relationship with other departments and personnel with TLE Framework Agreement responsibilities. ANA and Conservation:*
  - *Provide TLE orientation to Manitoba Infrastructure and Transportation (MIT) and Intergovernmental Affairs (IAF)*
  - *Coordinate meetings between MIT and EFNs on winter roads*
  - *Work cooperatively with IAF to address municipal concerns*
  - *Work cooperatively with Science, Technology, Energy and Mines on mineral dispositions*
  - *Work cooperatively with Manitoba Hydro and Water Stewardship on easement and access issues*

- *The Deputy Ministers of ANA and Conservation hold monthly TLE update meetings and invite other departments as required.*

Recommendation 3

We recommend that ANA work with TLEC to communicate on a regular periodic basis with each First Nation with respect to parcel selections received, the current status of those parcel selections, and actions completed and in progress to address issues arising from the parcel selections.

Response from Officials

- *Conservation will continue to provide information to TLEC, INAC and EFNs on parcels of land from the TRELES system.*
- *In addition to providing updated reports at parcel review meetings, Conservation will provide quarterly updates to EFNs.*

Recommendation 4

We recommend that ANA improve its file management and documentation for the 1997 TLE Framework Agreement. File documentation should be easily accessible for all parcel selections and departments should forward to a central registry a complete record of the meetings and discussions held to identify issues and concerns, examine alternatives, and facilitate resolution of identified issues and concerns.

Response from Officials

- *ANA prepares, distributes to Parties, and copies to central file, correspondence to EFNs after each parcel review meeting.*
- *ANA will review the current central file system and assess an electronic data filing system.*

Recommendation 5

We recommend that, in conjunction with the other parties to the Framework Agreement, ANA develop and document annual and multi-year action plans to guide implementation of the 1997 Framework Agreement.

Response from Officials

- *ANA and Conservation have developed a five-year Strategic Plan for TLE along with the development of an annual implementation plan.*

- *Manitoba, Canada and TLEC, through the IMC, are preparing a strategic plan.*

Recommendation 6

We recommend that ANA, in conjunction with other departments, implement a clear process for considering options and developing Manitoba's view on major issues requiring on-going discussion.

Response from Officials

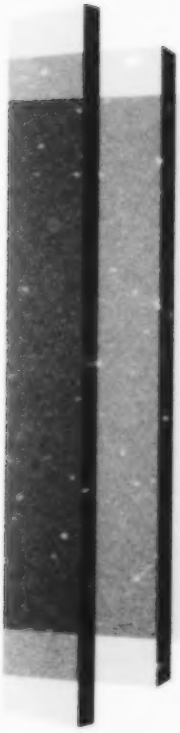
- *ANA and Conservation, with other departments, will review any impediments to the implementation of TLE and document the internal process and outcomes.*
- *The Deputy Ministers of ANA and Conservation hold monthly TLE update meetings and invite appropriate departments to review and resolve any internal impediments to approval of crown land transfers. As required, Deputy Ministers or Senior Officials follow-up with INAC, TLEC and EFNs.*

Recommendation 7

We recommend that ANA further develop its internal and public reporting of progress in implementing the 1997 Framework Agreement.

Response from Officials

- *ANA will work with central communications to provide a more comprehensive report of the status of the 1997 Framework Agreement.*



Health and Healthy Living

Chapter 2: Personal Care Homes Program

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1.0 Main Points

What We Examined

Personal Care Homes (PCHs) provide 24 hour, 7 days a week supervised nursing care, including healthcare services, to seniors who can no longer manage safely at home, even with family support and community services such as Manitoba's Home Care Program. The Department of Health and Healthy Living (the Department) oversees and regulates PCHs, with certain responsibilities delegated to Regional Health Authorities (RHAs).

We examined the Department's processes for ensuring the quality of PCH care; assessment and placement procedures for PCH admission, including management of PCH wait lists; long term capital planning for meeting future PCH bed needs; and processes for ensuring PCH financial and operational accountability, including funding mechanisms and public performance reporting.

Why It's Important

Demographic projections provided by the Department show Manitoba's population of seniors aged 75 and older growing by 91% between 2006 and 2036, from approximately 82,000 to over 157,000, with most of this growth expected to occur after 2017. Seniors are entering PCHs at a later age; however, they are entering with increasingly complex care needs. Many are vulnerable to potential harm because of their age, as well as physical and cognitive impairments.

For the year ended March 31, 2008, PCHs received Provincial government operating funds totaling approximately $290 million and fees from residents of approximately $142 million. In addition, in 2008/09, the Department identified a requirement for PCH capital funding totaling $176.5 million ($51 million for commitments in progress or scheduled to start in the short term, $69.5 million to address construction projects in the intermediate term, and $56 million for longer term future projects.

What We Found

Quality of Care

PCH standards: *The Personal Care Homes Standards Regulation* was enacted in 2005, following communication and consultation with key stakeholders. This was significant since until then Manitoba had no regulated PCH standards. These standards were consistent with those found in other Provinces.

Visits to monitor and enforce standards: The Department monitored and enforced the standards through visits to PCHs by teams with appropriate skills, knowledge and experience. Team members had dual assessor and consultant roles and did not view themselves as inspectors.

Teams visited each PCH every 2 years, although this did not include visits to facilities with interim PCH beds. For all PCHs, the 5 standards the Department deemed core standards were assessed every other year. All other standards were assessed once every 6 years by selecting a different group of 7 of the 21 non-core standards during each visit. However, the Department did not select PCHs to be visited and standards to be assessed by considering potential risk factors (such as problems in meeting standards in the past, financial pressures, or trends in critical incident reports). Visits were always scheduled in advance and during weekdays, rather than on an unannounced basis.

Tools and processes: The Department had developed tools and processes reflecting the requirements of the *Personal Care Home Standards Regulation* to help them assess compliance with the PCH standards. These tools and processes could be enhanced to improve consistency and documentation of assessments, while still allowing room for professional judgment.

Follow-up on required improvements: The Department followed up on required improvements noted during the standards visits, but did not always verify corrective actions reported by PCHs in their action plans and progress reports. It also did not meet its goal of performing follow-up visits to 30% of the PCHs with completed action plans. In the absence of these follow-up visits, the Department relied on RHAs' oversight to ensure PCHs implemented corrective actions. However, it did not require RHAs to report on this oversight.

Results of standards visits: The Department summarized standards visit results for each region, but did not periodically summarize and review Province-wide results to determine any action required to respond to trends and to improve outcomes. We compiled and reviewed results for core standards (standards for integrated care plans, use of restraints, pharmacy services, safety and security, and staff education) as at December 31, 2008. More than half the PCHs did not meet 4 of the 5 core standards. These results reflected both the level of compliance with the standards and the assessment methodology used since a failure to meet a single essential component of a standard meant the standard as a whole was not considered met.

License review process: The Department had established a review process for renewing PCH licenses, but had not developed formal criteria for licensing and did not always initially receive sufficient information to make renewal recommendations. A review was not always conducted to ensure processes were in place to meet PCH standards when issuing a license to a new PCH.

Placement in a PCH

Placement decisions: Placements of seniors in PCHs were supported by the required medical, dependency and behavioral assessments.

Wait Lists: All RHAs monitored and managed the number of seniors on PCH wait lists, but some did not have systems to track wait times (time to first placement offer and time to preferred placement offer). As at December 31, 2008, 1,137 seniors were waiting for PCH placement in Manitoba.

PCH Facility Long Term Planning

Gathering information and developing a strategy: The Department gathered and monitored demographic and statistical information required for PCH facility long term planning. Together with the Department of Family Services and Housing, it had developed an "Aging in Place" strategy to provide alternatives to PCHs so seniors could stay in their communities longer.

Identifying needs, priorities and funding: The Department had not reassessed PCH facility long term capital funding requirements to reflect the current status of the Aging in Place strategy or recently updated and prioritized PCH capital needs identified by the RHAs. It had also not determined how these would be managed within the context of other departmental and government-wide priorities and constraints.

Financial and Operational Accountability

Operating funds: RHAs generally established annual operating funding levels for PCHs by adjusting the prior year's funding levels for expected price and volume increases and special initiatives. However, different PCH funding models had evolved over the years, resulting in differences that were not always logically supported by current data and analysis. Also, the Winnipeg RHA did not regularly update or verify the care levels for the bed numbers used in funding calculations, although there were different per diems for beds with different care levels. A new initiative of the Department designed to fund 3.6 hours of care per day for each PCH resident, without differentiating care levels that residents require, will lessen some funding issues but not completely eliminate them.

Resident fees: Fees paid by PCH residents to offset the cost of their room and board were based on individual or family taxable income, less any taxes payable. The Department and RHAs calculated PCH residential fees correctly based upon verified income levels.

Service Purchase Agreements: Service Purchase Agreements (SPAs) between RHAs and PCHs were a key tool used by RHAs to hold PCHs accountable for their financial and operating performance. Although devolved PCHs (PCHs owned and

operated by the RHAs) did not have SPAs, they had similar financial and statistical reporting requirements. Only not-for-profit PCHs provided audited financial statements. There were no audit requirements for devolved PCHs because the RHAs were directly involved in preparing the financial information. The for-profit PCHs also had no audit requirements.

Public performance reporting: There was limited public reporting of PCH performance results. Information on the results of PCH standards visits, PCH wait lists, and PCH critical incidents was not publicly available to support accountability to the Legislature and Manitoba citizens.

2.0 Background

Personal Care Homes (PCHs) provide 24 hour, 7 days a week supervised nursing care to seniors who can no longer manage safely at home, even with family support and community services such as the Manitoba Home Care Program. Care services provided in PCHs include:

- 24-hour nursing;
- personal care;
- physician care;
- food and nutrition;
- eligible medication and pharmacy services;
- housekeeping; and
- activities and recreation.

PCH regulations: Key regulations under *The Health Services Insurance Act* for PCHs include:

- the *Personal Care Homes Designation Regulation* lists all facilities designated as PCHs;
- the *Personal Care Home Licensing Regulation* sets out the licensing process for PCHs;
- the *Personal Care Homes Standards Regulation* sets out the standards to be followed by PCHs; and
- the *Personal Care Services Insurance and Administration Regulation* sets the daily rates to be paid by PCH residents.

The Department: The Department of Health and Healthy Living (the Department) oversees and regulates PCHs. The Continuing Care Branch of the Regional Affairs Division ensures compliance with Provincial PCH standards, oversees the annual licensing of PCHs, and develops Province-wide PCH policies.

The Department is also responsible for PCH capital planning and overall policy direction for health issues related to seniors, including Manitoba's "Aging in

Place" long term care strategy. Developed in 2006, this strategy offers a wide continuum of options designed to maximize the ability of seniors to maintain their independence and remain in their communities. In addition to PCHs, these options include Manitoba Home Care services, supportive housing (group living with supervision in a secure environment, but without the healthcare and other services offered in a PCH), supports to seniors in group living (such as communal meals), and specialized supports (specific services for individuals with complex health and personal care needs).

Regional Health Authorities: The 11 Regional Health Authorities (RHAs) in Manitoba are responsible, through their Long Term Care programs, for the operations of the PCHs in their jurisdictions. The Department has an individual responsible for liaison with each of the RHAs.

PCH Funding: PCH operations are funded by the RHAs, who in turn are funded by the Department. PCHs also collect fees from PCH residents. The Department sets these residential fees based on income levels. For the year ended March 31, 2008, PCHs received government operating funds totaling approximately $290 million and residential fees of approximately $142 million.

Number of PCHs and beds: As at March 31, 2008 there were 126 PCHs with 9,832 beds in Manitoba. **Figure 1** shows the distribution of these by Regional Health Authority (RHA). The Winnipeg RHA had the largest number of PCHs (31% of the total) and beds (58% of the total).

Figure 1

Regional Health Authority	Number of PCHs	Number of Beds
Assiniboine	27	909
Brandon	5	597
Burntwood	3	85
Central	15	831
Churchill	0	0
Interlake	11	551
Norman	3	126
North Eastman	5	190
Parkland	11	544
South Eastman	7	334
Winnipeg	39	5,665
Manitoba Total	126	9,832

Source: Manitoba Health and Healthy Living

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Manitoba Total	126	9,832

Source: Manitoba Health and Healthy Living

Types of PCHs: There are 3 different types of PCHs operating in Manitoba: devolved, non-proprietary, and proprietary. Devolved PCHs are owned and operated directly by the RHAs themselves; non-proprietary PCHs are owned and operated by not-for-profit organizations; and proprietary PCHs are owned and operated by for-profit corporations. As of March 31, 2008, there were 68 RHA owned PCHs; 40 not-for-profits; and 18 for-profits.

Management systems: Departmental data shows that Manitoba's senior population is growing and that, although seniors are entering PCHs at a later age, they are entering with increasingly complex care needs. Many are vulnerable to potential harm because of their age, as well as physical and cognitive impairments. Strong management systems and practices are necessary to ensure the quality of PCH care, effective assessment and placement procedures for PCH admission, long term capital planning that will meet future PCH bed needs, and accountability for PCH financial and operational performance.

3.0 Audit Approach

3.1 Audit Objectives

Our objectives for our PCH audit were to determine if:

1. The Department had adequate processes to ensure consistent and appropriate quality of care was delivered to PCH residents. **(Section 4.0)**
2. There were adequate processes to assess whether individuals required PCH care and to manage wait times for PCH placement. **(Section 5.0)**
3. There were adequate facility-planning processes to meet the future PCH bed needs of a growing senior population. **(Section 6.0)**
4. There were adequate processes to ensure proper PCH financial and operational accountability. **(Section 7.0)**

3.2 Audit Scope

The audit was conducted between November 2007 and December 2008. It examined PCH-related processes in place between April 1, 2006 and December 31, 2008. Our audit was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation, policies and practices, files, records, reports, correspondence, and other program

documentation, as well as discussion and interviews with individuals from the Department and selected RHAs and PCHs. We also accompanied Department staff on a number of visits to PCHs and observed several PCH license review meetings. In addition, we obtained information on PCH standards and PCH inspections from selected other Provinces.

The audit focused on the Department's PCH-related responsibilities and certain aspects of RHAs' oversight of PCHs. We did not audit the PCHs or the Department's Aging in Place long term care strategy.

4.0 Quality of Care

4.1 Developing and Communicating PCH Standards

The enactment of the Personal Care Homes Standards Regulation in 2005 was a significant achievement. Until then, Manitoba had no regulated PCH standards. At the time of our audit, the Regulation set out 26 standards. Department officials considered 5 of these to be the core (most important) standards. A summary of the core standards and their expected outcomes follows:

- **Integrated Care Plans**: Residents should consistently receive care that meets their needs, recognizing that care needs may change over time. These needs should be assessed within 8 weeks of admission to a PCH by an interdisciplinary team and reviewed at least once every 3 months. All staff providing direct care and services to the resident should be aware of the resident's current care plan. Selected examples of the required care plan elements include:
  - information on the type of assistance required with dressing, bathing, mobility, skin care, foot care, eating, exercise, and bladder and bowel function;
  - mental and emotional status;
  - safety and security risks and measures required to address them;
  - medications and treatments ordered by a physician;
  - hearing and visual abilities and required aids;
  - preferences for participating in recreational activities; and
  - religious and spiritual preferences.
- **Use of Restraints**: Residents should be restrained only to prevent harm to themselves or others, or when there is no other alternative. When a restraint is considered necessary following appropriate assessment, it should be correctly applied and documented. The resident in restraint should be checked regularly.

- **Pharmacy Services**: Residents should receive prescribed medications in accordance with their needs and treatments. Medications received should be correctly administered and properly documented in accordance with established policies and procedures. The PCH operator should appoint or contract a pharmacist to direct and be accountable for pharmacy services. Selected examples of the detailed aspects of the pharmacy standard include:
  - medications ordered by a physician should be reviewed by the pharmacist and other relevant members of the interdisciplinary team at least once every 3 months;
  - the resident's identity should be confirmed by referring to a current photograph before staff administer medication;
  - medications should be appropriately stored in a locked area; and
  - the pharmacist should conduct regular audits of the medication kept at the PCH, as well as audits of the medication-storage area.
- **Safety and Security**: The PCH operator should maintain the PCH environment so as to minimize safety and security risks to residents and protect them from potentially hazardous substances, conditions and equipment. Selected examples of the detailed aspects of the safety and security standard include:
  - call systems should be installed and maintained in proper working order within resident rooms, washrooms and bathing facilities;
  - open stairwells should be guarded;
  - all outside doors and doors to stairwells accessible to residents should be equipped with an alarm or appropriate locking device;
  - handrails should be properly installed and maintained in all corridors and grab bars should be properly installed and maintained in all bathrooms and bathing facilities;
  - domestic hot water temperature in resident care areas should be not less than 43 degrees Celsius and not more than 48 degrees; and
  - all potentially dangerous substances should be labelled and stored in a location not accessible by residents.
- **Staff Education**: The appropriate knowledge, skills and abilities for each person in the PCH should be identified and documented. Training should be available to staff to enable them to perform their duties effectively. There should be orientation sessions, fire-drill education, and properly maintained training attendance records for all PCH staff.

Another 21 PCH standards covered the following areas: Resident Bill of Rights; Resident Council; Eligibility for Admission; Information on Admission; Participation in Care Plan; Initial Care Plan; Freedom from Abuse; Physician Services; Nursing

Services; Health Records; Dietary Services; Housekeeping Services; Laundry Services; Recreation; Spiritual and Religious Care; Disaster Management; Infection Control Program; Person in Charge; Qualified Staff; Complaints; and Reports About Occurrences.

4.1.1 The Department considered standards in other Provinces when developing Manitoba's PCH standards

In 2003, as part of the standard-setting process, the Department compared the PCH standards being developed in Manitoba with those existing or under development in Ontario, Alberta, British Columbia, Nova Scotia and Saskatchewan. In addition, as part of our audit, we conducted an updated comparison of Manitoba's PCH standards to those in selected other Provinces. The Manitoba standards were generally consistent with the others, apart from some differences in terminology and the manner in which the detailed information associated with the standards was provided.

Some administrative standards in other Provinces were not included in Manitoba's PCH standards. For example, Manitoba standards did not cover wait lists, trust accounts, or PCH staff health. The Department may wish to consider developing standards in these areas. However, all standards directly relating to resident care uniformly adopted by other Provinces were included in Manitoba's standards.

4.1.2 The Department communicated with key stakeholders before and after implementing the PCH standards

The standards were developed in a collaborative manner with all concerned stakeholders. In the fall of 1999, Department officials met with representatives from the RHAs, the Manitoba Nursing Home Association, and the Non-Profit Long Term Care Administrator's Group to discuss and receive feedback on draft PCH standards. The proposed standards were also field-tested between 1999 and 2002. In addition, there was on-going education, dialogue, information-sharing and feedback between the Department, RHAs, and PCHs about the impending implementation of the standards.

Following implementation of the standards in 2005, the Department's on-going communication to PCHs and RHAs about the standards occurred through a variety of mechanisms. Standards consultants from the Department conducting PCH standards visits (discussed in Section 4.2) used these visits to further educate PCH staff about the standards. There was also on-going consultation between the standards consultants and PCH staff, as well as between PCH staff and RHA Long Term Care staff, about the intent of the standards and operational matters concerning the standards. Another forum for on-going communication about the standards was at stakeholder meetings, such as the meetings of the Long Term Care Network, a sub-group of the Health Programs and Services Executives'

Network. Members of the Long Term Care Network included representatives from the Long Term Care programs in each region and the Department who met to share information and discuss issues related to Long Term Care.

4.1.3 The Department developed policies and guidelines to support the PCH standards

The Department developed a number of policies and guidelines that supported and complemented the PCH standards. For example, there was a Provincial Restraint Policy requiring all RHAs to implement and adhere to their own regional restraint policies. These were intended to minimize restraint use, ensure accountability for restraints, and document restraint decisions. There was also a Provincial Nursing Service Guideline requiring a registered nurse or registered psychiatric nurse to be available on-site in a PCH to supervise nursing care at all times, or for there to be an acceptable alternative in place. In addition, the RHAs and PCHs developed their own policies to support and complement the standards.

4.1.4 The Department had not yet developed a formal process to periodically review and update the PCH standards regulation

To ensure that the PCH standards remain current and relevant, we expected the Department to have a formal process to periodically review and update the *Personal Care Homes Standards Regulation*. However, the Department had not yet developed such a review process because the standards were relatively new.

Department standards consultants were noting potential enhancements to their standards-assessment tools based upon their experiences and believed this information would also be useful in a formal review of the regulation. We would also expect a periodic formal review to consider the performance record of PCHs in meeting existing PCH standards, and to consider changes to standards, either implemented or contemplated in other jurisdictions, since the Department's last review. The Department may also need to update the regulation for new circumstances, such as new forms of healthcare professionals or changes in best practices in particular areas.

We recommend that the Department establish a process to periodically review and update the PCH standards set out in the *Personal Care Homes Standards Regulation*.

4.2 Monitoring and Enforcing Compliance with PCH Standards

The Department monitored and enforced compliance with the PCH standards through the standards visits conducted by its standards consultants. The Department considered these visits to be mechanisms for continuous quality improvement, as opposed to inspections. Standards visits were usually performed by a team consisting of 1or 2 standards consultants from the Continuing Care Branch of the Department, a departmental liaison to the RHA, and a RHA Long Term Care representative. The team assessed compliance with the standards through observation, review of a sample of 6 to 8 resident-care files, review of various PCH documents (such as policies, minutes, results of medication audits, and staff training records), and discussion with PCH staff and residents.

Standards visits were normally completed in 1 day. Each visit examined the 5 core standards, as well as a different set of 7 of the remaining 21 standards, depending on which of 3 different assessment tools were selected for the standards visit. At the end of the day, the standards visit team discussed their findings with PCH staff. A formal assessment report was issued 6 to 8 weeks after the visit.

The Department also monitored and enforced the PCH standards through its PCH re-licensing review process. PCHs were required to renew their licenses annually, as outlined in the *Personal Care Home Licensing Regulation*, which stated *"after reviewing the operations of a personal care home in such a manner as the minister considers necessary, the minister may renew its license for a term of one year"*.

4.2.1 The Department clearly defined roles and responsibilities for monitoring and enforcing PCH standards

Primary responsibility for monitoring and enforcing the PCH standards rested with the Continuing Care Branch of the Department. The standards consultants in this Branch performed standards visits and liaised and consulted with the PCHs on an on-going basis. The Branch also conducted the annual PCH re-licensing review process.

The Department's Protection for Persons in Care Office had an indirect role in monitoring and enforcing PCH standards, through its administration of *The Protection for Persons in Care Act*. This Act was designed to help protect adults from abuse while receiving care in PCHs, hospitals or any other designated health facility. The Office investigated specific reports of suspected abuse in PCHs and kept the Continuing Care Branch advised of its PCH-related activities.

The Regional Affairs Division of the Department also had an indirect role in monitoring and enforcing PCH standards. Its staff monitored staffing levels at

the PCHs through receipt of prescribed staffing reports. They also received and monitored critical incident reports for all healthcare facilities, including PCHs. A critical incident is an unintended event that occurs when health services provided to an individual result in a serious or undesired consequence (such as death, disability, injury or harm) that is not from either the individual's underlying health condition or a risk inherent in providing the health services.

The RHA Long Term Care staff supported PCH critical incident investigations and, together with the RHA Patient Safety groups, monitored implementation of any resulting recommendations. Their day-to-day PCH monitoring responsibilities supported Continuing Care Branch oversight of the PCHs and they participated as team members in the standards visits led by the standards consultants.

4.2.2 Members of the standards visit team possessed the skills, knowledge and experience required to properly assess compliance with PCH standards

The members of the standards visit team collectively had the skills, knowledge, and experience to properly assess compliance with the care standards. All team members had nursing degrees or an equivalent level of education and experience. This was consistent with the qualifications for staff performing similar functions in selected other Provinces. Each team also had a standards consultant acting as the team leader who had several years experience in conducting standards visits. In addition, several team members had specific experience in geriatric care.

Sometimes the standards visit team included a pharmacist from the Winnipeg RHA Long Term Care program to review compliance with the pharmacy standards, but this was not done consistently. For standards visits conducted outside the Winnipeg RHA, compliance with pharmacy standards was usually assessed by one of the nurses on the team. While these nurses had adequate skills to perform the assessment, the pharmacist performed a more detailed review and provided a higher level of assurance regarding pharmacy standards compliance.

There was a training package and a one-day orientation session for new standards consultants and other standards visit team members. At the time of our audit, one team member had not yet attended the orientation session. The training package provided information on all of the standards, as well as the history behind their development. It also included case studies on the standards related to the resident bill of rights, dietary standards, and infection-control standards. Significant training occurred on-the-job, as well as in the orientation sessions. New standards consultants required at least 6 months of experience before assuming a standards team leader role.

4.2.3 Members of the standards visit team had dual assessor and consultant roles

Standards consultants were not always completely independent of the processes they assessed during the standards visits since their role was not exclusively limited to performing these visits. They also provided the PCHs with information, kept them up to date on best practices, and, in some cases, helped PCHs to prepare for the standards visits.

RHA Long Term Care staff members on the standards visit teams were similarly not completely independent of the processes being assessed during the standards visits. They had on-going oversight responsibilities for the PCHs being inspected and were therefore assessing the results of their own day-to-day oversight.

There were benefits to having the PCH site visits conducted by individuals already familiar with the PCH's operations who could also help resolve any deficiencies noted. There were also benefits to having Continuing Care staff working as "consultants" assisting the PCHs with continuous quality improvement, as opposed to working solely as "inspectors" issuing non-compliance orders.

We reviewed the role and responsibilities of staff assessing compliance with PCH standards in selected other Provinces. They did not typically have dual assessor and consultant roles similar to those found in Manitoba. Despite concerns over the dual roles of team members, we did not observe any bias in the assessments made during the standards visits we attended.

We recommend that the Department exclude any standards consultant who provides significant consulting services to a PCH before a standards visit from assessing compliance with the standards during the visit.

4.2.4 The Department did not use a risk-based approach to select PCHs to visit and standards to assess

Each PCH was visited by the standards visit team once every 2 years. The team visited all the PCHs in one RHA, then all those in the other RHAs in a linear fashion. These were arranged so each visit to a PCH assessed compliance with the 5 core standards, plus a different grouping of 7 of the 21 other standards on a rotating basis. This allowed core standards to be assessed every other year and all other standards to be assessed once every 6 years for every PCH.

The process assessed all PCHs with equal frequency. It did not consider, based on assessed risks (such as problems in meeting standards in the past, higher than normal staff turnover or financial pressures), that some PCHs might be in need of more frequent visits than others. It also did not consider, based on observed trends, (for example, trends in critical incident reports), that some PCHs might

sometimes require a more frequent assessment for a particular standard (for example, infection control) than would otherwise be dictated by the normal cycle.

Our review of PCH inspection practices in selected other Provinces found that most used a risk assessment to select PCHs and standards to be assessed. This allowed them to focus limited resources on areas of greatest concern.

We recommend that the Department use a more risk-based approach to select the PCHs to visit and the PCH standards to assess, while still ensuring that all standards continue to be assessed at all PCHs over a long term cycle.

4.2.5 The Department's standard visits schedule did not include visits to facilities with interim PCH beds

The Winnipeg RHA had maintained 174 interim PCH beds at the Misericordia Health Centre for the last several years, as a means of addressing PCH waiting lists (discussed in Section 5.2.1). It was expected that bed capacity within the PCH system and PCH alternatives offered under the "Aging in Place" long term care strategy would eventually lead to the closing of these beds. However, this was more likely in the long term than in the near future.

While some PCH standards would not have applied to this facility because of the interim nature of the PCH beds, many others would have been fully applicable or applicable in a modified fashion. However, the Department was not applying its existing monitoring and enforcement process for ensuring compliance with PCH standards to these beds. This situation occurred because the beds were never expected to be used for so long.

Because many aspects of the PCH standards apply to these interim beds and there are no specific plans to close them soon, they should be included in the standards visits. This would help ensure quality of care is being properly maintained for all facilities with PCH beds.

We recommend that the Department extend PCH standards visits to facilities with interim PCH beds.

4.2.6 Standards visits were always scheduled in advance and during weekdays

The visits to PCHs to assess compliance with PCH standards were always scheduled well in advance, allowing the PCHs time to prepare for the visit. The Department did not make any of these visits on an unannounced basis. In addition, visits were made only during weekdays. The Department did not visit PCHs to assess compliance with standards during evenings, nights or on weekends.

Our review of practices in selected other Provinces found that some made greater use of unannounced visits in assessing compliance with standards and scheduled some visits during times other than weekdays. Visiting some PCHs without prior notice and at a variety of different times would allow the standards visit team to observe different activities and staffing levels than they are able to observe by scheduling the visits only in advance and on weekdays. These visits would provide an additional level of assurance on compliance with the standards and supplement the current approach.

When standards visits showed expectations with respect to the standards had not been met, the Department had a follow-up process which included conducting some unannounced follow-up visits to verify subsequent corrective actions reported by PCHs. However, this was not the same as using unannounced visits to assess the standards in the first place. In addition, these unannounced follow-up visits typically occurred only during weekdays. Section 4.2.8 has more details concerning these follow-up visits.

We recommend that the Department conduct some visits on an unannounced basis and schedule some visits during evenings, nights and weekends.

4.2.7 The Department had developed tools and processes for assessing compliance with the PCH standards that could be enhanced to improve assessment consistency and documentation

The standards visit team started each site visit with a tour of the PCH lasting 2 to 3 hours. The Department had developed a 2 page walkabout checklist for use during this tour.

The Department had also developed standards assessment tools to help determine if PCH standards were being met. These were used by PCH management as self-assessment tools to be completed prior to the standards visits, as well as by the standards visit team during their on-site assessments. The tools set out measures or criteria for assessing each of the standards, as well as the scoring methodology to use. The majority of the standards had one or more measures considered essential. If any of these essential measures were not met, then the related standard was not met. For the other (non-essential) measures, if at least 80% were met, then the related standard was met; if between 60% and 80% were met, then the related standard was partially met; and if less than 60% were met, then the related standard was not met.

We compared the assessment tools to the *Personal Care Homes Standards Regulation*. The tools accurately and completely reflected the standards set out in the regulation.

The standards consultants selected the 6 to 8 resident files typically reviewed during a standards visit to obtain an appropriate mix of files for examination. They asked PCH management to identify some files where residents had been recently admitted and others where residents had restraint orders. The remaining files were randomly selected by the standards consultants from different wings or floors of the PCH.

During our initial observations of standards visits, we noted some inconsistencies in the number of resident files that had to meet a particular measure for the team to decide if the measure was fully met, partially met, or not met. However, this occurred much less frequently during our later observations. Consistency was achieved by applying the same scoring methodology already in use for the standards measures to the resident files (just as a standard was considered fully met if at least 80% of the measures were met, a measure was considered fully met if at least 80% of the files met the measure).

Standards team members used their professional judgement and individual working styles in assessing the standards. As a result, some took more notes or made greater use of checklists than others, or engaged in more ad hoc discussion with PCH staff and residents, depending on the circumstances.

Some standards required more professional judgement than others. For example, assessing the appropriateness of the temperature in a room was straightforward, while assessing the impact of missing information in a resident care plan required more professional judgement.

Development and consistent use of more detailed checklists and additional written guidance in areas requiring use of professional judgment would improve the consistency and documentation of the assessments, particularly when members of the standards visit team are less experienced.

We recommend that the Department develop and regularly use more detailed written guidance and checklists for standards visits to ensure consistency in assessing and documenting compliance with the PCH standards.

4.2.8 The Department followed up on required improvements, but did not always verify corrective actions reported by PCHs

The standards visit team provided an overall assessment for each of the 12 standards reviewed during on-site visits, determining whether each had been "met", "partially met", or "not met". Following the visits, the Department sent formal written reports detailing the results to the applicable RHA to distribute to the PCHs. These reports had accompanying templates to help the PCHs create and document their action plans for areas requiring improvement. Action plans

completed by the PCHs were to be returned to the Department, via the applicable RHA, within 50 days of receiving the reports and action plan templates. In addition, reports of progress to date against the action plans were to be completed by the PCHs and sent to the Department, via the applicable RHA, 50 days after the action plans were submitted.

We reviewed a sample of action plans received from PCHs by the Department, as well as related progress reports. In all cases, we found that the 50 day timeframes had been adhered to and the required improvements were reported as implemented or being implemented.

The Continuing Care Branch had a stated goal of performing unannounced follow-up visits to 30% of the PCHs with completed action plans and progress reports. However, we found that only 7 (5%) of these visits had occurred between the time the standards visits process was implemented and December 31, 2008. If the 30% goal had been met, there would have been 37 unannounced follow-up visits performed during this time. The Department advised us that the workload of the standards consultants had not allowed them sufficient time to perform more visits. At the time of our audit, there were 3 standards consultants for the 126 PCHs.

Without performing follow-up visits (whether unannounced or scheduled in advance) to verify the information provided by the PCHs in their progress reports, the Department cannot be certain that the improvements outlined in the action plans and progress reports have actually been put in place and are operating effectively.

In those cases where the Department did not perform a follow-up visit, it instead relied upon the RHAs' oversight to ensure that the corrective actions reported by the PCHs had occurred. However, the Department did not require the RHAs to report on this oversight or confirm in writing that all identified issues had been satisfactorily resolved.

We recommend that the Department verify the corrective actions reported by PCHs in their action plans and progress reports, using a combination of risk-based follow-up visits and signed declarations of verification from the RHAs.

4.2.9 The Department summarized standards visits results for each RHA but did not periodically summarize and review Province-wide results

Following the standards visits conducted in each RHA, the Department summarized the results for all the PCHs in the region in a report issued to the RHA. However, the Department did not periodically summarize and review Province-wide statistics on the level of compliance with the PCH standards.

We obtained the results of standards visits to date for all PCHs from the Department and compiled them, using the most recent assessment rating for a standard if it had been assessed more than once. The summarized results showed that more than half the PCHs did not meet 4 of the 5 core standards.

While the majority of PCHs met the standard for Safety and Security, this was not the case for the Integrated Care Plan, Restraints, Pharmacy Services and Staff Education standards. The results reflected both the level of compliance with standards and the assessment methodology used since a failure to meet a single performance measure considered essential meant the standard as a whole was not met. For example, use of pencil or whiteout on an integrated care plan would cause the integrated care plan standard to be assessed as not met. Similarly, a single PCH staff member without fire safety training would cause the staff education standard to be not met.

Because standards visits were only recently implemented, only 2 core standards in 2 RHAs had been assessed more than once. However, this limited sample showed improvement in the level of compliance with the restraints standard on the second visit. Department officials felt this was an early indication that core standard results would improve over time.

Given the 6 year timeframe for reviewing standards the Department considers non-core, each of the 21 non-core standards had not yet been assessed in two thirds of the PCHs as at December 31, 2008. For the one-third of the PCHs where these standards had been assessed, the results for the non-core standards were generally better than those for the core standards. Most non-core standards were either fully met or partially met for over 80% of the PCHs assessed, although this level of compliance was not achieved with respect to the dietary, disaster management or person-in-charge standards.

Periodic summarization and review of Province-wide results from the standards visits would provide the Department with information to tailor future actions to respond to emerging trends. For example, the Department could identify areas where additional or revised education material, policies, resources, and/or standards assessment tools might be required.

We recommend that the Department periodically summarize and review Province-wide results on the level of compliance with PCH standards to identify actions required to respond to trends and to improve results.

4.3 PCH Licensing

The Department conducted an annual PCH licensing review to support the re-licensing of all PCHs. The licensing review team included the Director of Continuing Care, standards consultants, a representative from the Protection of Persons in Care Office, a representative from the Regional Affairs Division of the Department, and the Department's RHA liaison. Prior to the licensing review meetings, the following information was gathered for each PCH to assist in the licensing renewal decision:

- the summary results for the most recent standards visit (the total number of standards met, partially met, and not met);
- the total number of any proven Protection of Persons in Care Office allegations during the past year;
- the total number of critical incidents during the past year and the number of those that resulted in serious consequences, such as the death of a resident;
- whether nursing services guidelines had been met during the past year (if there was a registered nurse or registered psychiatric nurse available 24 hours a day, 7 days a week); and
- a summary of any PCH program recommendations from any RHA accreditation review conducted by Accreditation Canada, a not-for-profit, independent organization that provides health and social service organizations with a voluntary external peer review to assess the quality of their services.

Following review and discussion of this material, the Director of Continuing Care made recommendations to the Minister of Health on whether to renew each PCH license.

4.3.1 The Department had not developed license-renewal criteria to guide the professional judgment used to make renewal recommendations

We expected there would be formal written criteria for license renewal, but we found that no such criteria had been established. Following assessment and discussion of the information available, the licensing review team relied solely upon their professional judgment to make license-renewal recommendations.

In considering licensing recommendation options, the team balanced several different factors, including resident safety and security concerns and a desire to avoid any resident disruptions if possible. Potential options for addressing any licensing concerns included: issuing an unrestricted license and monitoring the

situation closely through follow-up visits; issuing the license with conditions; or closing the PCH by revoking the license. Licensing conditions could be of various degrees, including potentially replacing existing PCH management. However, based on our observations, the license review team did not formally assess the need for conditions to be attached to a license when discussing concerns about a PCH.

There was only one instance where a PCH had been re-licensed with conditions. In that case, there had been a serious concern over the staffing levels at the PCH and the license renewal restricted the intake of new residents until the concern was satisfactorily resolved. There were no instances where a license had been revoked following the license-review process.

Establishing written criteria for licensing renewal would ensure consistency of decision-making over time and provide greater assurance that conditions are being placed on licenses when warranted. Licensing criteria would not replace the need for professional judgement, but rather provide guidelines for exercising that professional judgment.

We recommend that the Department develop criteria to guide the exercise of professional judgment in making license-renewal recommendations.

4.3.2 The Department gathered information for making license-renewal decisions, but this information was not always sufficient

The standard information to be gathered prior to license-renewal meetings was always available for the license review team at the time of their meetings. In addition, in some cases, members of the team brought supplementary information with them to the meetings, in the form of additional documentation and their own personal knowledge. In this way, the team obtained information such as:

- which PCH standards had not been met (instead of just the total number of standards not met);
- recent progress in corrective actions taken by a PCH to meet standards; and
- further detail on a critical incident or a Protection of Persons in Care Office investigation.

However, supplementary information of this nature was not always available to answer questions when needed.

After reviewing the available information, the license-review team sometimes felt a visit to the PCH to follow-up on certain matters would be helpful to their decision-making. Whenever possible, a visit was then scheduled, but it was not always possible for the visit to be scheduled before the license expired. In these

cases, information was obtained through follow-up discussions with PCH and/or RHA staff, with the visit scheduled as soon as possible.

RHA Long Term Care representatives were not invited to the license-review meetings. In some cases, these representatives may have been able to provide the additional information required to satisfy the concerns of the license-review team.

Given the summarized nature of the information presented and a process which reviewed all PCHs for a particular region at the same time, license-review discussions sometimes centred on regional trends instead of matters specific to a particular PCH.

There was no documentation kept of the supplementary information presented during the meetings, information obtained from any related follow-up visits to the PCHs, or follow-up discussions with PCH or RHA staff.

Ideally, license-renewal recommendations should be supported by appropriately detailed, current information and all information used in license-renewal decisions should be documented. Since updated visits to PCHs would sometimes be helpful to the decision-making process, the Department should schedule licensing reviews to allow such visits to be performed before a licensing recommendation is made.

We recommend that the Department enhance the information available for making license-renewal recommendations and keep a record of all information used in the license review process.

4.3.3 The Department issued licenses to new PCHs without a formal review to assess if the PCHs had processes in place to meet PCH standards

We expected standards consultants to visit a new PCH before the Department issued an initial license. We further expected an initial license to only be issued following a favourable report and positive recommendation from the Continuing Care Branch. This would allow standards consultants to assess if the PCH had proper processes in place to meet PCH standards, although they would not be able to determine if the processes were functioning effectively until the PCH started admitting residents and a regular standards visit could be conducted.

Standards consultants did not perform a visit of this nature when one new PCH opened early in 2007, although they did visit another new PCH before its opening later that same year. There was no formal licensing recommendation made by the Continuing Care Branch in either case. Instead, initial licenses were granted based on the RHA's indication that the PCH was ready to be licensed.

Department officials told us there was no formal process for standards consultants to visit a new PCH and make recommendations on an initial license because no new PCHs had been licensed for several preceding years.

We recommend that the Department develop a formal process for issuing licenses to new PCHs that includes, before issuing the license, receipt of a favourable report and positive recommendation from the Director of Continuing Care, based on a visit to the PCH by a standards consultant.

5.0 Placement in a PCH

Recommendations for placing seniors in PCHs were usually made by Manitoba Home Care coordinators in the RHAs and supported by various needs assessments. These recommendations were then reviewed and approved by a panel, typically consisting of RHA Long Term Care staff and a medical professional.

Seniors approved by the panel selected "preferred" and "alternate" PCH choices and were placed on wait lists maintained by each RHA. Seniors not approved for placement were notified of the reason for refusal and informed of their right to appeal the decision.

Placement decisions were made by RHA staff; however, PCH management had the right to refuse a placement if they believed they would be unable to accommodate it successfully. For example, a placement might be refused if a PCH was limited in the number of individuals it could accommodate requiring higher levels of care. The RHAs monitored refusals to ensure they were justified.

Seniors had the right to refuse an offered placement. Those who could not be cared for adequately at home while waiting for PCH placement were admitted to an acute care facility or an interim PCH bed (see section 4.2.5) on a temporary basis.

5.1 Assessing the Need for PCH Placement

5.1.1 PCH placement decisions were properly supported by the required assessments

Assessments to support the paneling process were to include a medical assessment, dependency assessment (assessing the dependency on others for daily activities), and, if appropriate, a behavioural assessment. These were to be conducted by qualified staff, such as nurses, physicians, social workers, and home care coordinators. Depending on the circumstances, these assessments were carried

out through examination, observation and discussion with the individuals being assessed, as well as their family and caregivers.

The assessments were used to determine the level of assistance required by seniors, although this was not the sole consideration in deciding if they required PCH placement. The placement decision also considered the level of assistance they were able to receive in their home from family, friends and home care services.

A 4-level scale was used in assessments, with level 1 indicating minimal dependence on assistance and level 4 indicating maximum dependence. Generally, seniors at levels 1 and 2 were more likely to be able to continue to have their needs met outside of a PCH, while those at levels 3 and 4 were more likely to require PCH care.

We reviewed a sample of files from 3 RHAs to determine if placement decisions were properly supported by physical, dependency, and behavioural assessments conducted by qualified professionals. We found that all decisions were properly supported and documented, and assessments were updated as required while seniors waited for PCH admission.

5.2 Managing Wait Lists for PCH Placement

5.2.1 RHAs monitored and managed the number of seniors on PCH wait lists but did not always have systems to track wait times

PCH wait lists were maintained and managed by Long Term Care staff in the regions. RHAs managed their wait lists in the manner they felt best met their unique circumstances, given differences in population, number of PCHs, demographics, and geographical dispersion. For example, some used a strictly chronological system, offering the first placement to the first person on the list. Others used a more flexible chronological system that considered expressed individual preferences, as well as the need to promptly address any unsafe conditions in the senior's home environment.

Figure 2 shows 1,137 seniors were waiting for PCH placement in Manitoba at December 31, 2008. While all RHAs tracked and monitored the number of seniors waiting for a PCH bed, they did not all track the times these seniors waited. For example, Winnipeg RHA officials knew that 439 seniors were waiting for a PCH bed at December 31, 2008, but they did not have a system in place to tell them how long each senior had been waiting or the average wait time. In contrast, the Interlake RHA had adopted wait time standards of "6 months to first PCH bed offer" and "one year to preferred PCH bed offer" and tracked whether these standards were met.

Figure 2

Number of Seniors Waiting for PCH Placement at December 31, 2008				
Region	Waiting in Community	Waiting in Hospital	Waiting in an Interim PCH Bed	Total Waiting
Assiniboine	108	101	n/a	209
Brandon	23	22	n/a	45
Burntwood	1	1	n/a	2
Central	52	64	n/a	116
Churchill	n/a	1	n/a	1
Interlake	66	47	n/a	113
Norman	42	14	n/a	56
North Eastman	19	4	n/a	23
Parkland	23	31	n/a	54
South Eastman	61	18	n/a	79
Winnipeg	253	62	124	439
Province	648	365	124	1,137

Source: Manitoba Health and Healthy Living

Department and RHA officials noted the variability of PCH wait times. Unlike the wait times for surgical procedures (which depended primarily on the number of surgeries that could be performed in a day), PCH wait times depended upon several different factors. These included the variable lengths of individual PCH stays, as well as the number of seniors refusing their first PCH bed offer and waiting for their preferred choice.

There was no Province-wide system in place to monitor PCH wait lists or wait times, or any Provincial wait-time standard for admission to a PCH. The Regional Affairs Division of the Department received monthly wait-list information (the number of seniors waiting) from each RHA, which the Department used on an ad hoc basis. However, the Department did not regularly review and monitor this information as it had delegated this oversight responsibility to the RHAs.

Province-wide tracking and monitoring of the number of seniors waiting for a PCH bed and wait times to first bed offer and preferred PCH placement would allow more effective planning and management of Provincial PCH bed capacity.

We recommend that the Department and the RHAs track and monitor wait times to first and preferred PCH placement offers, as well as the number of seniors waiting for PCH admission.

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We recommend that the Department and the RHAs track and monitor wait times to first and preferred PCH placement offers, as well as the number of seniors waiting for PCH admission.

6.0 PCH Facility Long Term Planning

PCH facility long term planning is required to ensure the right number of PCH facilities and beds are in the right geographical areas to meet the future demands of a growing senior population. This facility planning needs to be integrated with the planning of alternative long term care options for seniors. It also needs to respond to demographic and geographic population trends, consider PCH occupancy rates and wait lists, assess and prioritize capital needs, and identify how capital funding requirements will be met.

6.1 Planning Inputs

6.1.1 The Department gathered and monitored demographic and statistical information required for PCH facility long term planning

The Department monitored demographic trends, statistics and other information relevant to PCH facility long term planning. For example, it reviewed Statistics Canada census data, RHA Community Health Assessments, PCH statistical data, and periodic studies such as those conducted by the Manitoba Centre for Health Policy.

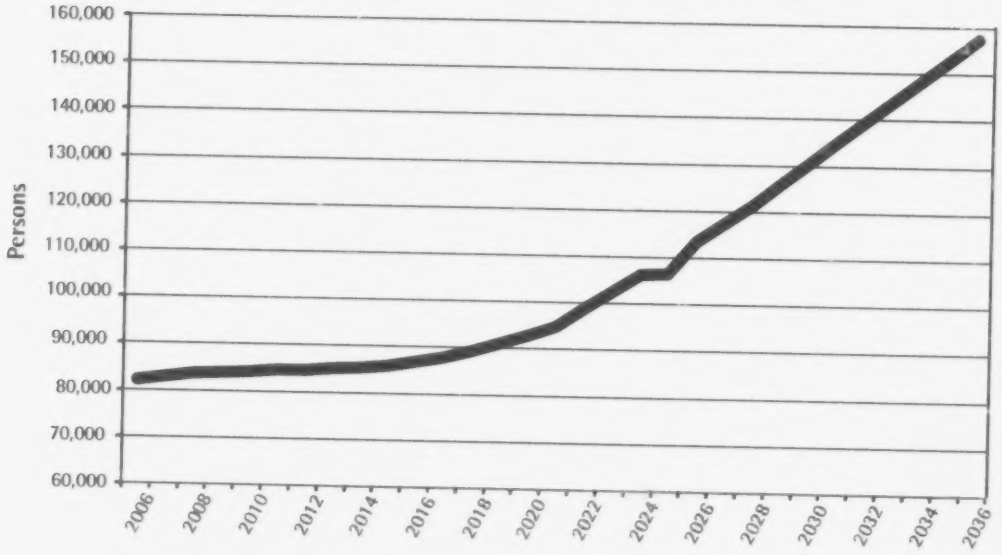
RHA Community Health Assessments used census data, resident surveys, public forums, and other available data, such as bed map information, to assist in RHA planning. This also helped RHAs to determine if the number of PCH beds in their regions were sufficient in total, and if they were geographically located so as to best meet demand, since some areas within an RHA might have too many beds while others might have too few.

The PCH statistical data gathered by the Department for 2007/08 included PCH occupancy rates (96%), average age at admission to a PCH (83), average length of stay in a PCH (2.7 years), and the PCH wait-list information.

As a result of its monitoring activities, the Department was aware of the expected future growth in Manitoba's senior population. Data from the Manitoba Bureau of Statistics showed the number of seniors aged 75 and older was expected to increase from 82,000 in 2006 to over 157,000 in 2036, an increase of 91% over 30 years. The increasingly accelerated rate of this growth, most of which is expected to occur after 2017, is shown in **Figure 3**.

Figure 3

Estimated Growth in Manitoba Seniors Aged 75+



Source: Manitoba Bureau of Statistics

The Department was also concerned about Manitoba's high ratio of PCH beds: 126 per 1,000 persons aged 75 years and older. Manitoba was one of several Provinces with a ratio above the Canadian average of 101 beds per 1,000, based on a cross-Canada survey conducted by Saskatchewan Health in 2000. This led to the Department exploring alternatives to PCH care.

6.1.2 The Department had developed an "Aging in Place" strategy which addressed PCH facility long term planning

The "Aging in Place" strategy developed in 2006 was designed to provide options to PCH care that would allow seniors to stay in their communities longer. These options included: Manitoba Home Care services; supportive housing (group living with supervision in a secure environment, but without the healthcare and other services offered in a PCH), supports to seniors in group living (such as communal meals) and specialized supports (specific services for individuals with complex health and personal care needs). The strategy was also designed to address the expected future growth in Manitoba's senior population and concerns over Manitoba's high ratio of PCH beds per 1,000 seniors aged 75 or older, as well as rising costs.

In 2007, the Department estimated that the cost to build one PCH bed ranged from $176,000 to $210,000. An additional 1,000 PCH beds (an increase in existing

capacity of approximately 10%) would therefore require a capital investment of at least $176 million. Departmental data also showed significantly lower annual operating costs for seniors with levels 1 and 2 care needs in a supportive housing facility ($12,775) compared to in a PCH ($54,750).

A sub-component of the Aging in Place strategy was a plan to eliminate PCH rooms with three or four beds, as well as reduce the number of rooms with double beds, in favour of single rooms. Multi-bed rooms were considered less desirable because of the lesser dignity afforded residents, higher risk of infection, and greater likelihood of difficulties in dealing with any aggressive behavior, need for evacuation, or use of lifts. Most multi-bed rooms were in the Winnipeg RHA, which had 667 two-bed rooms, 26 three-bed rooms, and 39 four-bed rooms.

The original timetables for creating new supportive housing, eliminating multi-bed rooms, and closing PCH beds have been delayed. As a result, the plan to finish eliminating PCH rooms with three and four beds by April 1, 2010 will likely need to be extended. This has deferred original estimated cost savings associated with planned PCH bed closures, which were to partially offset the costs associated with creating additional supportive housing. Department officials noted the need to have some supportive housing infrastructure in place before reducing the number of PCH beds.

6.2 Identifying Specific Capital Needs, Priorities and Funding

6.2.1 The Department had not reassessed PCH facility long term capital funding requirements to reflect the current status of the Aging in Place Strategy and current needs identified by the RHAs, or determined how these would be managed

PCH facility long term planning and the Department's process for setting PCH capital-funding priorities considered all the demographic and statistical planning information gathered by the Department, plus funding available for major repairs and maintenance. The planning also considered the differing characteristics and needs of the various RHAs. For example, some RHAs had stable senior populations, while others had decreasing or increasing senior populations. In addition, planning considered the availability of supportive housing within the region and the trends with respect to the proximity of seniors' families. Department officials reported that capital priorities were established by giving first priority to patient and staff safety concerns. All capital requests, including those related to PCH facilities, were considered by the Department in consultation with the RHAs. Using its surveillance of the system, the Department then created a shorter list of priorities for Treasury Board consideration.

Long term capital funding requirements for PCH facilities are likely to be significant. In 2008/09, the Department identified a requirement for priority capital funding for all health facilities. This included $176.5 million for PCH facilities ($51 million for commitments already in progress or scheduled to start in the short term; $69 5 million to address construction projects in the intermediate term; and $56.0 million for longer term future projects).

The $176.5 million outlined above did not reflect all needs previously identified by the RHAs or a complete and updated needs assessment. As part of the 2009/10 budgeting process, the Department received additional PCH capital funding requests from the rural RHAs totaling $104.2 million. The Winnipeg RHA did not request any similar additional PCH capital funding, although this was not because all known needs had been identified and were currently being met.

The Department had not conducted any recent formal analysis of PCH facility long term capital funding requirements that considered the current status of the Aging in Place Strategy, or recent needs identified by all RHAs. In addition, the Department had not determined how these would be managed within the context of other Department and government-wide priorities and constraints.

We recommend that the Department develop a PCH facility long term capital plan consistent with demographic and population trends, the current status of the Aging in Place Strategy, and current PCH capital needs identified by the RHAs. The plan should include total capital funding requirements and the Department should determine how these are to be prioritized and managed.

7.0 Financial and Operational Accountability

We expected operational funding provided to PCHs by RHAs to be supportable, consistently applied and periodically reviewed. We further expected residential fees collected by the PCHs to be calculated correctly and the residential fee structure periodically reviewed and updated. We also expected there to be oversight of the financial performance of each PCH in order to ensure the operational costs incurred were accurately reported and consistent with approved budgets. In addition, we expected PCH operational performance to be monitored to ensure that performance expectations were met and to support management decision-making. Finally, we expected key PCH performance information to be periodically publicly reported to support oversight by the Manitoba Legislature.

7.1 PCH Funding

7.1.1 Different PCH funding models had evolved over the years and differences were not logically supported by current data and analysis

For the year ended March 31, 2008, PCHs received total operational funding from the RHAs of approximately $290 million and fees from PCH residents of approximately $142 million. The RHAs estimated residential fees when determining the operational funding to provide to each PCH, then adjusted the funding once the actual fees received were known. RHA funding was not affected by the level of donations received by the PCHs.

RHAs communicated estimated PCH operational funding needs in their total annual funding requests to the Department. In turn, the Department incorporated estimated PCH funding needs in their total annual funding request to Treasury Board. The Department and RHAs both had to adjust their budgets if funding levels approved by Treasury Board differed. The Department's funding to RHAs generally allowed them to allocate their total approved funding levels between different program areas as they saw fit.

Operational funding from RHAs to PCHs was primarily comprised of funding for regular recurring annual operations. There was also operational funding for special initiatives and recurring costs that varied significantly from year to year.

Generally, RHAs established regular recurring annual operational funding levels to PCHs of all types by adjusting the prior year's funding levels for expected price and volume increases, such as wage settlements and changes in the total number of beds.

The Winnipeg RHA used a per diem (cost per bed per day) funding model for regular operations that differed in some ways from the funding model used in other regions. This per diem funding model was used for all not-for-profit PCHs in the region, as well as to fund all for-profit PCHs in Manitoba, no matter which region the for-profit PCH was in.

For each PCH funded by the Winnipeg RHA, two per diem funding levels were calculated: one for beds with level one/two care requirements; another for beds with level three/four care requirements. For all not-for-profit PCHs, the Winnipeg RHA adjusted the prior year's funding level for each of the two care level groups for expected price and volume increases. It then divided the adjusted funding amount by the number of beds in each group and the number of days in the year. The median per diem rate (the middle rate, where an equal number of not-for-profit PCHs would be above and below) for each care group was then calculated. All not-for-profit PCHs with calculated per diems less than the median were raised

to the median funding level, although those with calculated per diems higher than the median funding level did not have their funding similarly reduced. The same median per diem funding levels applied to the not-for-profit PCHs were then also used to fund the for-profit PCHs.

This funding model resulted in higher per diem funding levels for some PCHs than others, based largely on historical funding by the Department dating back prior to establishment of the RHAs. Winnipeg RHA and Department officials were unable to provide any rationale or documentation to logically support the higher per diem rates for some PCHs. They did, however, note that it would be reasonable to expect different funding levels based on factors such as the age and size of different PCH facilities, even though funding levels were not currently being adjusted to reflect the varied capacities of the PCHs to supplement their core funding with donations.

The Winnipeg RHA received updated information on bed levels from the for-profit PCHs annually. However, bed levels used in the funding calculation for the not-for-profit PCHs were frozen at their 2001 levels, creating a risk of potential under-funding or over-funding. The Department's data indicated that PCH residents were currently being admitted with higher care levels than previously, so potential under-funding was more likely.

Although it received annually updated information on the for-profit PCH bed levels, the Winnipeg RHA did not regularly verify the bed levels being reported. The most recent audit of these numbers occurred in 2006, when an individual with clinical expertise reviewed the care levels for a sample of 215 residents (approximately 10% of the for-profit PCH bed population). This audit found 7 level 2 beds had been misclassified by the facilities as level 3. If this level of misclassification was representative of the total for-profit PCH population, level 3 care would have been funded and provided to 69 residents requiring level 2 care. These additional hours of care provided would have a potential annual cost of approximately $900,000. The Winnipeg RHA made no funding adjustments based on the audit because the bed levels were expected to fluctuate during the course of the year and the bed level differences were not considered sufficiently significant or representative to warrant either additional audit work or correction.

The service purchase agreements (see Section 7.2.1) between the Winnipeg RHA and the non-devolved PCHs had a section on the allocation of financial resources to the PCHs, stating that the funding allocation was to consider, amongst other factors, the "assessed levels of care required for the resident population within the Personal Care Home".

Winnipeg RHA and Department officials noted that past planned initiatives to review PCH funding models had been set aside in light of a new staffing initiative introduced by the Department in 2007. Under this initiative, the portion of

funding related to direct patient care was to be based on 3.6 hours of direct care for all residents, without differentiating the level of care. At the time of our audit, funding to the PCHs related to this staffing initiative was being provided on an after-the-fact basis and only upon proof of hiring and payments to incremental staff. **Figure 4** contrasts the new staffing guidelines with previous ones.

Figure 4

Department Staffing Guidelines for Hours of Direct Patient Care Per Day				
	Old Guidelines		New Guidelines	
	Level 2 Beds	Levels 3/4 Beds	<80 Beds	≥80 Beds
Registered Nurse/Psychiatric Nurse Hours	0.20	0.70	.72	0.54
Licensed Practical Nurse Hours	0.40	0.53	.54	0.54
Health Care Aide Hours	1.40	2.27	2.34	2.52
Total Recommended Hours of Direct Care	2.00	3.50	3.60	3.60

Source: Manitoba Health and Healthy Living

Data from the Winnipeg RHA showed that the hours of direct patient care per day reported by the for-profit and not-for-profit PCHs for 2006/07 ranged from 3.13 to 3.66 hours.

Due to difficulties in hiring additional staff, implementation of this staffing initiative progressed slowly. As at December 1, 2008, the Department had reimbursed the PCHs for $5.2 million of the $40 million to be spent over 4 years that was announced for the initiative in November 2007. Although this staffing initiative will eventually lessen the funding issues noted with the Winnipeg RHA's per diem funding model, it will not eliminate them entirely because it only relates to the funding for direct patient care.

PCH funding for major capital projects was approved on a project-by-project basis. Capital planning for the PCH system is discussed in further detail in Section 6.2.1. The for-profit PCHs received an additional $2.40 per diem to address safety and security concerns, acquisition of capital equipment, and major repairs and renovations. This differed from the other types of PCHs which received funding for similar items via special initiative and minor capital funding. The $2.40 had been in place for over a decade, without any review of the reasonableness or adequacy of the amount.

We recommend that the Department and RHAs work together to develop PCH funding options that can logically support any differences in PCH funding levels with updated financial information and assumptions.

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We recommend that the Department and RHAs work together to develop PCH funding options that can logically support any differences in PCH funding levels with updated financial information and assumptions.

7.1.2 The Department and RHAs calculated residential fees correctly based upon verified income levels and the Department periodically reviewed and updated the residential fee structure

PCH residential fees were paid by PCH residents to help pay for services unrelated to their health care, such as room and board. These fees were set out in the *Personal Care Services Insurance and Administration Regulation* and were based on individual or family taxable income, less any taxes payable. They were indexed and adjusted annually to reflect any cost-of-living increases.

Annual PCH residential fees for 2008/09 ranged from $10,841 ($903/month) to $25,441 ($2,120/month). The fee structure allowed each resident to have a minimum of $3,156 ($263/month) of disposable income for other personal expenses. For seniors who were single, widowed, divorced, or separated, the minimum fee applied to those with incomes less than $14,033 and the maximum fee applied to those with incomes greater than $28,596. For those with a spouse residing in the community, the minimum fee applied to those with combined incomes less than $42,735 and the maximum fee to those with combined incomes greater than $57,298. The proposal for the 2008/09 residential fees prepared by the Department showed that 25% of PCH residents were expected to pay minimum fees and 16% were expected to pay maximum fees.

Because residential fees were based on taxable income and taxes payable, the most recent year's tax information was required to determine the new rate to be paid by each resident every August 1, the effective date for rate revisions. The Department obtained this information directly from the Canada Revenue Agency (CRA) for residents who had completed tax information release forms. It then used an automated table to calculate the correct residential fee and sent this information to the PCHs. If a tax information release form had not been completed, the PCH had to obtain the tax information directly from the resident or the Public Trustee, if applicable.

We reviewed a sample of resident rate reports in 3 different RHAs. In all cases, the income levels matched documentation from CRA and the assessed rates were correct.

The Department and the Manitoba Health Appeal Board processed approximately 1,200 appeals of residential rate assessments annually. This represented approximately 12% of all residential rate assessments. One common cause for appeal was the practice of charging residents the maximum rate if they didn't have updated information or initial income tax information upon admission. These assessments were often appealed once the income tax information supporting a lower rate was obtained. Most appeals resulted in a lower rate assessment.

Seniors who had been paneled for placement to a PCH facility and were waiting for admission to a PCH from an acute care bed because they could not safely return to their homes were charged residential fees if they no longer specifically needed any acute care services. Although these seniors didn't have access to all services available in a PCH, this was consistent with *The Health Services Insurance and Administration Regulation*, which stated, *"If in-patient services are not medically required but are provided to an insured person whose need for placement in a personal care home has been determined by the assessment panel, the hospital shall make an authorized charge to the person...."*

7.2 Monitoring PCH Financial and Operational Performance Results

7.2.1 PCH financial and operating performance expectations were communicated and results were monitored, but not all PCHs were required to submit audited financial information

Signed Service Purchase Agreements (SPAs) between the RHAs and PCHs were a key tool used to hold PCHs accountable for their financial and operating performance. SPAs had been negotiated (or were being negotiated) for all not-for-profit and for-profit PCHs. There were no SPAs in place for the 68 devolved PCHs since they were part of the RHA's operations, however RHAs had mechanisms in place similar to those set out in the SPAs to hold devolved PCHs accountable.

The SPAs set out the services to be provided, plus record-keeping and reporting requirements. Prescribed financial information and statistical data were to be provided monthly. Examples of required statistical data included:

- the number of beds in operation;
- number of hours worked for nursing, housekeeping, social work, physiotherapy, occupational therapy, recreation, and plant maintenance salaries; and
- kilograms of laundry processed inside and outside the facility.

SPAs required audited financial statements only for the not-for-profit PCHs. The rationale for excusing for-profit PCHs from this requirement was based on precedent. Department and Winnipeg RHA officials told us that for-profit PCHs had never submitted audited financial statements. This had occurred despite section 21(2) of the *Personal Care Services and Administration Regulation* which states *"On or before October 1 in each year, every proprietary personal care home shall submit to the minister an audited financial statement and a statistical report which shall be in the form and contain the information as the minister may require respecting the operations of the personal care home for the 12 month period preceding March 31"*.

Department officials noted this regulatory requirement no longer applied under regionalization of healthcare services, although the regulation had not been formally revised or repealed. In addition, both Department and Winnipeg RHA officials noted that several for-profit PCHs were part of larger corporate entities and that separate audited financial statements were not generally prepared for the sub-divisions. They also noted that the audited financial statements of a larger corporate entity would not be useful to monitor an individual PCH. Nonetheless, requiring specific audited financial information (as opposed to a full set of audited financial statements) from all for-profit PCHs would provide a level of assurance over their financial information similar to that received for the not-for-profit PCHs and expected of other recipients of public monies in other departments.

SPAs also set out PCH responsibilities with respect to other matters, such as the admission of residents, insurance requirements, safeguarding confidential information, and cooperation in providing any other information required by the RHAs.

Devolved PCHs followed similar financial and statistical reporting requirements to those outlined in SPAs for non-devolved PCHs. However, there was no audit requirement because the RHAs were directly involved in preparing the financial information.

PCH performance information received directly by the Department included the staffing level and critical incident reports monitored by the Department's Regional Affairs Division. Critical incident reports included information on items such as falls and medication errors occurring in the PCHs.

Other PCH performance information received and monitored by RHAs included each RHA's unique Continuous Quality Improvement (CQI) information. The Winnipeg RHA's CQI indicators included information on medication utilization, infections, complaints, and nursing vacancies. The Interlake RHA's CQI indicators included information on staff immunizations, infection rates, waiting times for PCH placement, analysis of critical incidents involving falls and medication variances, attendance at training sessions, and resident and family satisfaction surveys.

The Winnipeg RHA also conducted periodic PCH resident satisfaction surveys. A 2006 survey showed that 89% agreed with the statement, *"Overall, I am satisfied with the care and service I receive"*, although the survey only had a 37% response rate.

Several PCHs also prepared business plans and annual reports, which they shared with the RHAs, although not required to do so.

We recommend that the Winnipeg RHA require all proprietary PCHs to provide audited financial information.

7.2.2 Public reporting of PCH performance results was limited

Good public performance reporting is fundamental for accountability to the Legislature and Manitoba citizens. The Department made the following information about PCHs available through its annual departmental and statistics reports and website:

- notable events, such as the opening of a new PCH;
- number of licensed beds and total resident days for each PCH;
- average resident age at admission, by care level for each PCH; and
- average length of stay for residents 75 years and older for each PCH.

RHA annual reports varied in their information on PCHs. The Winnipeg RHA annual report had information such as the total number of PCH residents, updates on PCHs under construction or recently opened, and the number of seniors placed in PCHs from the hospital and the community.

There was no key PCH performance information publicly available. For example, information concerning PCH wait lists, critical incidents, and the results of PCH standards visits was not included in Department or RHA annual reports or on their websites. This limited the ability of both the Legislature and the public to critically review PCH performance results.

We noted Ontario had more public disclosure of PCH performance results. The Ontario Ministry of Health website had the most recent inspection results for every PCH, including information on standards met and not met, as well as citations issued. In addition, every Ontario PCH had to publicly post their inspection reports.

Some other Provinces had information concerning their PCH standards and standards assessment tools on their websites, although they did not also have the results of inspections or standards visits. The Department and Winnipeg RHA websites did not have any similar information.

> We recommend that the Department enhance publicly available information on PCHs to include information on compliance with PCH standards.

8.0 Summary of Recommendations

Quality of Care

1. That the Department establish a process to periodically review and update the PCH standards set out in the Personal Care Homes Standards Regulation.
2. That the Department exclude any standards consultant providing significant consulting services to a PCH before a standards visit from assessing compliance with the standards during the visit.
3. That the Department adopt a more risk-based approach to selecting the PCHs to visit and the PCH standards to assess, while still ensuring that all standards continue to be assessed at all PCHs over a long term cycle.
4. That the Department extend PCH standards visits to facilities with interim PCH beds.
5. That the Department conduct some visits on an unannounced basis and schedule some visits during evenings, nights and weekends.
6. That the Department develop and regularly use more detailed written guidance and checklists for standards visits to ensure consistency in assessing and documenting compliance with the PCH standards.
7. That the Department verify the corrective actions reported by PCHs in their action plans and progress reports, using a combination of risk-based follow-up visits and signed declarations of verification from the RHAs.
8. That the Department periodically summarize and review Province-wide results on the level of compliance with PCH standards to identify actions required to respond to trends and to improve results.
9. That the Department develop criteria to guide the exercise of professional judgment in making license-renewal recommendations.
10. That the Department enhance the information available for making license-renewal recommendations and keep a record of all information used in the license review process.
11. That the Department develop a formal process for issuing initial licenses to new PCHs that includes, before issuing the license, receipt of a favorable report and positive recommendation from the Director of Continuing Care, based on a visit to the PCH by a standards consultant.

Placement to a PCH

12. That the Department and the RHAs track and monitor wait times to first and preferred PCH placement offers, as well as the number of seniors waiting for PCH admission.

PCH Facility Long Term Planning

13. That the Department develop a PCH facility long term capital plan consistent with demographic and population trends, the current status of the Aging in Place Strategy, and current PCH capital needs identified by the RHAs. The plan should include total capital funding requirements and the Department should determine how these are to be prioritized and managed.

Financial and Operational Accountability

14. That the Department and the RHAs work together to develop PCH funding options that can logically support any differences in PCH funding levels with updated financial information and assumptions.
15. That the Winnipeg RHA require all proprietary PCHs to provide audited financial information.
16. That the Department enhance publicly available information concerning PCHs to include information on compliance with PCH standards.

9.0 Departmental Response

The personal care home (PCH) program has been a key part of the health care delivery system in Manitoba since its beginnings in 1973. Manitoba Health and Healthy Living (MHHL) (the Department) is committed to ensuring that PCH residents in Manitoba receive quality, safe care that is monitored on a regular basis by MHHL staff (standards consultants) through the standards review process.

In 2005, the Department began Standards Review visits to 124 licensed personal care homes (PCH) using the newly legislated Standards of The PCH Standards Regulation under The Health Services Insurance Act. The plan is to implement the Standards over a six-year period. While it was not expected that all PCHs would immediately meet these new and rigorous standards of care, in the second round of Standards Review visits we are finding considerable improvement in Manitoba's PCHs. Further improvements are expected once all 26 Standards have been assessed in all PCHs across the province.

Five of the 26 Standards are considered core Standards and are assessed with each review. Significant improvement has been seen across PCHs in the core Standards.

For example, the Restraints Standard was not met by 76% (29 of 38) of Winnipeg PCHs on initial standards visits in 2004/05. This dropped to 9% in the second round of Standards visits to Winnipeg in 2007/08. The third round of visits to the Winnipeg facilities will be undertaken in late 2009, early 2010.

Each standard is assessed based on a number of performance measures, some of which are considered bolded (required). The assessment methodology for each Standard calculates the number of met; partially met; and not met performance measures to determine the rating for that Standard. All bolded performance measures must be met in order for the standard to be fully met. As a result, should one bolded measure not be met, even though every other performance measure (bolded or not) may have been met, the rating is considered unfulfilled for that Standard. This could mean that the rating does not accurately reflect the reality of their compliance. Follow-up work done by the PCH to rectify any issues identified during the Standards visit is monitored through the Action Plan and Status Update process. As identified below, the Department will be undertaking a review of the standards, and this will include a review of the performance measures and rating, and how compliance is reflected.

The Department is pleased to report that many of the issues raised during the audit have been addressed and others are in the process of being addressed. This includes:

- The Department documents changes needed to the standards to clarify performance measures or to meet changes in legislation. A formal standards review process will be developed and implemented. Adjustments to the current standards will be completed once all 26 standards have been reviewed in all PCHs to improve clarity and incorporate best practice recommendations. Interim changes have been made in key areas such as resident safety.
- The Department will develop a procedure to ensure standards consultants will not assess facilities where they have provided significant prior involvement or leadership. While it is the standards consultant's role to educate the regional health authorities about the performance measures and the evidence needed to meet them, the region is responsible for educating the facilities. This current practice is consistent with the audit recommendations and will continue on an on-going basis.
- The order of standards visits within a region is conducted on a risk based approach. Regions are asked to identify facilities that are a concern to them so that visits can be prioritized accordingly. The Department is reviewing the current process to more broadly implement a risk-based approach to standards visits.

- A risk-based approach for unannounced visits includes selection criteria based on the lowest scoring facilities or concerns identified by the region, the public or the Minister and/or as an outcome of an allegation to and subsequent investigation by the Protection for Persons in Care Office. The Department plans to further increase the number of unannounced visits to one-third of the facilities in each region.
- Interim care is provided in one location in Winnipeg. The Department plans to license and monitor these beds.
- To enhance the current process, the Department will explore implementation of limited, focused and issue-based visits during the evening and/or night.
- Over the past year, the Department has embarked on work to further develop and refine written guidance and checklists and standardize processes to guide the professional judgment that standards consultants use during standards visits.
- The orientation process for new MHHL staff to lead a standards visit independently is now quite detailed and typically spans a number of months. New staff currently have many opportunities (under supervision) to lead the team in the rating of a standard and to present the findings of the visit before they work independently.
- An RHA-signed declaration process will be required for all facilities in a region. This measure will ensure that further to a standards visit all planned corrective actions have been taken. The Department will work with the regions on developing and implementing the process.
- The Department will implement a bi-annual process to review province-wide results once all 26 standards have been reviewed in all PCHs or more frequently as regional summaries indicate the need.
- The Department is strengthening its current annual licensing renewal process. Criteria developed to inform licensing renewal recommendations will improve this process. Communication of the criteria to be will be shared with regions in advance. Recording of minutes of the licensing renewal meetings will provide detailed evidence of the process.
- A standards review protocol for licensing new PCHs has been developed and pilot tested. The Department is in the process of developing provincial policy and will work with regional health authorities to finalize the policy.
- Each regional health authority monitors wait lists to first and preferred PCH placement offers as well as the number of individuals awaiting PCH placement. The Department will work with regions to strengthen this

process (including consistency), and to monitor capacity within the system and individuals' access to PCHs.

- Capital Planning is undertaking analysis of demographic and population trends, taking into consideration the Aging in Place strategy, as these are significant factors that influence the prioritization of PCH expansion and redevelopment projects. Reinvestments in existing facilities have been taking place through the department's annual Safety and Security capital program. A multi-dimensional modernization strategy for the oldest of the personal care homes is being considered by Capital Planning.
- The Winnipeg Regional Health Authority advises that efforts are already underway with the proprietary Personal Care Homes to ensure that they provide audited financial information to the WRHA.
- Currently, Manitoba Health and Healthy Living funds the provincial health system using a regionalized global funding model. This means MHHL provides funding to the regional health authorities. In turn, the regions assess and prioritize the needs of their communities and facilities, and make evidenced-based decisions about allocating their funds to the most-needed projects.

  Manitoba Health and Healthy Living is aware that differences between how individual regions fund their long-term care facilities exist. The province will direct regional health authorities ensure their region-specific funding practices for long-term care facilities have processes to include updated financial information and assumptions.
- The Department has reviewed the auditor's recommendation on public disclosure of PCH performance results and will identify opportunities to report publicly on personal care homes.

Intergovernmental Affairs

Chapter 3: Assessment Services Branch

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1.0 Introduction

For taxation purposes, property assessment in the Province of Manitoba is governed under *The Municipal Assessment Act* of Manitoba, Chapter M226 of the Statutes of the Province of Manitoba (the Act), and the related regulations. Assessments within the City of Winnipeg are governed by both *The Municipal Assessment Act* and *The City of Winnipeg Charter* and are conducted by the City Assessor. Services provided by the City Assessor are outside the scope of this audit.

The Act establishes the position of The Provincial Municipal Assessor (PMA). The PMA is appointed by the Lieutenant Governor in Council and heads the Assessment Services Branch (the Branch) of the Department of Intergovernmental Affairs (the Department).

The Branch provides property assessment services:

- to local governments (excluding the City of Winnipeg) and Manitoba Aboriginal and Northern Affairs for the property taxation purposes;
- to Manitoba Education, Citizenship and Youth to calculate the Education Support Levy that municipalities are to levy on commercial properties; and
- to the 36 school divisions across the province to calculate the special levy that municipalities are to assess on residential and farm properties to support school programs.

In deciding to perform an audit of the Branch, we considered the significance of this function to the Legislative Assembly and the public at large. We noted that property tax revenues are the largest source of funding for local governments. In the Department's "2004 Statistical Information for Municipalities in the Province of Manitoba" it was reported that property tax revenues for the 198 municipalities excluding Winnipeg totaled $256 million from properties with an assessed value of $10.6 billion. Fair assessments play a key role in ensuring the equitable distribution of the property taxes within each municipality, school division and the Province.

2.0 Purpose, Scope and Approach

We examined the following activities of the Branch:

- charging municipalities for assessment services;
- conducting assessments;
- inspecting properties on a periodic basis;
- verifying sales;
- maintaining an up-to-date costing system;

- monitoring compliance with policies; and
- monitoring assessment results.

Our audit examined processes and results as at January 2006 unless otherwise noted in our observations.

Our audit examined assessments conducted in four municipalities as part of the 2006 general reassessment. These municipalities are listed below:

District Office	Municipality
Brandon	City of Brandon
Swan River	RM of Kelsey
Selkirk	RM of Lac du Bonnet
Steinbach	RM of Springfield

We selected a sample of approximately 15 assessments from each of these municipalities (for a total of 66 assessments) and included residential, farm and commercial properties.

In reviewing the processes for monitoring assessment results we utilized the services of experts in the field of property assessments.

Our scope did not include an evaluation of the reasonableness of assessments or judgments made. Rather, we focused on whether there were well defined assessment processes, whether they were consistently followed, and whether necessary information was available to make reasonable assessments or judgments.

Our work was substantially conducted between January 2006 and June 2007.

Our examination was performed in accordance with the value for money auditing standards recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

3.0 Main Messages

We concluded the following:

- The property assessments we examined were conducted in a manner consistent with Branch methodology.
- For income generating commercial properties, there is a need for the Branch to increase its efforts to obtain business income and expense information from a greater proportion of property owners.
- The Branch should strengthen its risk based field inspection process to ensure all properties are inspected within a reasonable cycle. Inspections

are important because they help ensure that property assessments are based on an accurate and complete inventory of existing property characteristics.

- Conclusions on the validity of a sale and on the property characteristics at time of sale are frequently based on assessor judgment only. As such, in many cases, the vendor or purchaser are not contacted, nor is the interior of the property inspected or the interior characteristics otherwise confirmed.
- The Branch needs to ensure that values recorded in its construction cost system reasonably reflect actual construction costs for the reference year.
- In 2005 a quality control review function was introduced but only with respect to the sales verification process. The risk conditions faced by the Branch support the need for a comprehensive quality control review function.
- The Branch needs to demonstrate that its assessment services are effective. To this end, the Branch has recently begun to explore the use of ratio studies.

4.0 Background

4.1 The Assessment Process

What Is Property Assessment?

Assessment is the estimation of a property's probable market value. The market creates the value, the Branch appraises and reports it. The value assigned to each property must be calculated on a consistent basis in order for assessments to be fair and equitable to all property owners. The assessed value is used in the calculation of property taxes.

Under the Manitoba *Municipal Assessment Act*, all properties are assessed every four years to ensure assessments keep pace with changing market values. To determine a property's assessment, an assessor takes into account the local market conditions during a reference year. The 2002 reassessment was based on 1999 market values, and the 2006 reassessment used 2003 as the reference year.

The assessment is the assessor's best estimate of the most probable selling price for a property had it been for sale in the reference year. Location, size, age and replacement cost are some of the elements that affect market value. Property information collected by assessors, along with statistical analysis of typical selling prices in the reference year, form the basis of most assessments. The

assessed value may not be exactly the same as the selling price of the property, as assessments only reflect typical values of comparable properties. The purpose of the assessment is not to directly reflect one sale price but to assess all similar properties at a similar value so that taxation is shared fairly.

How Assessments Link To Property Taxation

In the spring of each year, municipalities, school divisions and Manitoba Education, Citizenship and Youth determine the amount of property taxes to be raised. Rates are set for each by dividing budget requirements by the total assessment in the taxing jurisdiction. Tax rates, expressed as thousandths of the total assessment, are referred to as the "mill rate".

For the purpose of calculating mill rates and taxes, municipalities use portioned assessment. Portioning was introduced with the amendments to assessment legislation in 1990 that introduced market value assessments. When Manitoba began market value assessments, it was determined that the various types of property had increased in value at varying rates over the years. Bringing assessments up to market values all at once would have resulted in very large tax increases for some property owners. To phase in the changes, nine property classes were created with each class being assigned, initially, the same share of taxes that such property had been paying before market valuation began. Through annual adjustment of the portion percentages assigned to certain classes of property, the desired distribution of the tax burden was achieved. In 2002, one property class was added (Designated Higher Education). **Figure 1** itemizes the portioned rates by property class as at January 2006.

The municipal mill rate is applied to the portioned assessment. For instance, if a property owner's single-family residence is valued at $ 100,000, its portioned assessment (45%) is $45,000 and the mill rate is applied to this figure.

Figure 1

Portioned Rates as at January 2006

Property Class	Portioned Percentage
Residential 1,2,3	45
Farm Property	26
Institutional	65
Pipeline	50
Railway	25
Designated Recreational	10
Other	65
Designated Higher Education	0

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Properties That Are Exempt From Property Taxes

Properties in Manitoba are subject to both municipal (including local improvement) and school property taxes. School property taxes include both school division special levy and the provincial education support levy.

Certain properties are exempt from paying property taxes, under *The Municipal Assessment Act*. Exemptions are granted for various reasons. For example, exemptions recognize:

- the principle that property owned by government (i.e., federal, provincial) should be exempt from taxation. These properties are required to pay a grant in lieu of tax under other legislation;
- that it does not make sense for a municipality to tax itself;
- that certain properties provide a broad public good and have a limited ability to pay property taxes; and
- unique, local circumstances.

Three types of property tax exemptions are provided under *The Municipal Assessment Act*:

- **General Exemptions – Section 21** - Properties are exempt from all municipal (including local improvement) and school property taxes, (e.g., property owned by the Crown, Convention Centre Corporation, Mental Health Research Foundation).
- **Real Property Partial Exemptions – Section 22** - Properties are exempt from paying municipal and school property taxes, but are required to pay local improvement taxes levied by a municipality (e.g., property owned by municipalities, schools or hospitals).
- **Exemption from School Tax – Section 23** - Properties are exempt from paying school property taxes. Properties are required to pay municipal (including local improvement) taxes (e.g., property owned or used for a personal care home, agricultural society, or community association).

  Municipalities also have authority to exempt these properties from municipal tax, at their discretion. Properties are still required to pay local improvement taxes.

The Right To Appeal Assessments Subject To Tax

Appeals are initially heard by a Board of Revision. Boards of Revision are established annually by each municipality. Only the following can be appealed:

- the amount of the assessed value;
- whether the property is in the correct property class; or

- whether a property should be exempt from school taxes or exempt from both municipal and school taxes.

A decision of the Board of Revision may be appealed to the Municipal Board with respect to:

- the amount at which the property was assessed; and
- the classification of the property.

A decision of the Board of Revision may be appealed to the Court of Queen's Bench if the question pertains to the liability of the property to taxation.

Decisions of the Municipal Board and the Court of Queen's Bench may be appealed to the Court of Appeal on questions of law or on questions regarding the jurisdiction of the Municipal Board or the Court of Queen's Bench. Court of Appeal decisions are final.

4.2 Assessment Services Branch Activities

Services

The Branch delivers its services from a main assessment office in Winnipeg and 10 field assessment offices located in: Brandon, Dauphin, Minnedosa, Morden, Portage la Prairie, Selkirk, Souris, Steinbach, Swan River and Thompson.

The assessment services include determining the values, classification, and liability to taxation of:

- "real property" (land and buildings) in all 198 municipalities;
- "personal property" (equipment) used for gas distribution systems and for oil and gas production in all municipalities, and other personal property in 133 municipalities that impose a personal property tax; and
- "business assessment" in 37 municipalities that impose a business tax.

Branch Objectives

To provide an equitable, stable and predictable assessment base to support real property taxation.

To provide legislation and policy in support of property assessment and taxation that is seen to be responsive and equitable from the perspective of both ratepayers and taxing authorities, and establishes an economic climate that is competitive with other jurisdictions.

To provide accurate property and valuation information to taxing authorities, property owners, government agencies and other clients.

To aggressively pursue the principles of continuous improvement to ensure the delivery of quality assessment services in a fiscally responsive manner fully accountable to clients.

- whether a property should be exempt from school taxes or exempt from both municipal and school taxes.

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Activities

Principal activities of the Branch include:

- Updating assessment rolls to reflect new construction and also changes in owner, owner address, legal description, subdivision of land or additions to buildings; issuing notices to the affected owners; and providing the preliminary and final rolls to the municipalities.
- Responding to appeals filed at the Boards of Revision and the appeals filed at the Municipal Board.
- Providing municipalities with the information required for "supplementary taxation" - tax bills for new construction that were not on the final assessment roll delivered in the previous year, thus ensuring municipalities collect the full tax revenue they are entitled to.
- Conducting property reviews, to ensure property records are current.
- Conducting the quadrennial reassessment.
- Informing stakeholders about the assessment process by:
    - meeting with municipal councils and responding to public enquiries;
    - publishing a guide for Boards of Revision, Reference Sheets for Municipal Councils, and Fact Sheets and brochures for the public describing why and how property is assessed; and
    - providing public access to assessments via the Internet and to detailed computer data by subscription to Manitoba Online.

The Branch researches issues related to property valuation; develops policies and procedures for the district offices; liaises with the City of Winnipeg Assessor; assists businesses, other organizations and other provincial and federal government departments with respect to assessment issues. The Branch also provides advice to the Provincial government on legislative and policy issues related to property assessment.

Figure 2 lists the volumes of certain activities over a five year period ending in 2006/07.

Figure 2

Activity Volumes					
	2002/03	2003/04	2004/05	2005/06	2006/07
Roll entries	390,000	390,000	393,000	395,000	401,700
Roll changes recorded	30,000	97,000	93,278	117,000	122,715
Appeals filed at the Boards of Revision	1,249	1,221	766	2,066	739
Appeals filed at the Municipal Board	57	38	7**	141	16
Properties reviewed	35,000	42,200*	64,000	47,000	84,000

* Starting in 2003, property reviews include reviews using air photos, meeting with the owner and revisions based on updated income information from commercial owners as well as other forms of property review.

** There were also 29 outstanding from the previous year.

Source: Annual Reports for the Department of Intergovernmental Affairs and Trade.

Clients and Stakeholders

Stakeholders that use information provided by the Branch include:

- Municipalities - assessments are a critical component in raising the municipal taxation necessary to support their local service delivery.
- Manitoba Education Citizenship and Youth (Education Support Levy) and the Province's 36 school divisions (special levy) and districts - assessments are used in raising the revenue necessary to support school programs.
- All provincial and federal government departments with responsibility for Crown property - assessments are used as the basis of grant-in-lieu of tax payments made to municipalities, school divisions and the Province, as applicable.
- Property owners, fee appraisers, lending institutions and the public - assessment data are used for a variety of purposes.

Branch Costs

Branch costs are summarized in **Figure 3**.

The Branch operates on a cost-recovery basis. Of its total budget, 25% is recovered from Education, Citizenship and Youth and 75% is paid by municipalities into the Minister's Trust Fund.

Figure 3

Assessment Services Branch					
Expenditures	($000s)				
	2002/03	2003/04	2004/05	2005/06	2006/07
Total Salaries	6,350.9	6,288.9	6,788.2	6,782.0	6,880.3
Total Other Expenditures	1,638.0	1,435.9	1,464.0	1,471.7	1,501.7
Total	7,988.9	7,724.8	8,252.2	8,253.7	8,382.0

Source: Annual Reports for the Department of Intergovernmental Affairs.

5.0 Findings

We examined the following activities of the Branch:

5.1 charging municipalities for assessment services
5.2 conducting assessments
5.3 inspecting property
5.4 verifying sales
5.5 maintaining the construction cost system
5.6 monitoring compliance with policies
5.7 monitoring assessment results

5.1 Municipal Levy Charged Appropriately

In accordance with Section 8(1) **Annual levies by minister** of *The Municipal Affairs Administration Act*, municipalities can be charged their proportionate share of expenses incurred by the Branch in doing property assessments.

Observations

On an annual basis the Department charges municipalities for the assessment services provided. The assessment related operating costs are allocated to municipalities based on each municipality's share of the Province's total portioned assessment value (excluding Winnipeg). 75% of estimated assessment costs are recovered from municipalities and deposited into the Minister's Trust Fund. The total amount of estimated operating costs for the 2004/05 fiscal year was $10,251,300 (calculated as shown in **Figure 4**). At the end of each fiscal year, the Province obtains from the Minister's Trust Fund, 75% of the actual assessment costs. The remaining 25% is recovered from Education, Citizenship and Youth.

Consistent with the practice of prior years, the municipal levy for 2004/05 was calculated based on the approved estimates for 2004/05 rather than on the actual expenses incurred. This practice is necessary because municipalities have to be invoiced by March 1 (as such, actuals for the fiscal year ending March 31 are

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not yet known). As a result of this practice, the total levies may exceed actual assessment costs and generate a surplus in the Minister's Trust Fund. By March 31, 2004, the surplus in the Minister's Trust Fund had accumulated to $1,246,307. As a result, the Minister approved an estimated drawdown of $707,300. This amount decreased the municipal levy requirement in 2004/05 as shown in **Figure 4**.

Figure 4

2004/05 Municipal Levy

	Assessment Services Branch (ASB)	Information Services Branch Operating Costs Related to Assessment Services	Total
2004/05 Estimated Operating Costs	$8,453,400	$1,797,900	$10,251,300
75%	$6,340,100	$1,348,400	$7,688,500
Less estimated drawdown of the Minister's Trust Fund			$(707,300)
Total Municipal Levy			$6,981,200

Source: 2004/05 Departmental Estimates and internal documents.

We reviewed the 2004/05 fiscal year levy paid by municipalities. The municipal levy for each of the four municipalities reviewed is shown in **Figure 5**. We found that the municipal levies were appropriately calculated.

Figure 5

Municipal Levy Calculation for the Selected Municipalities - 2004/05

Municipality	Municipality's Portioned Assessed Value	Province's Portioned Assessed Value (excl. Wpg.)	Percentage Allocation	Recoverable Operating Expenses	Municipal Levy
(A)	(B)	(C)	(B)/(C)=(D)	(E)	(E)*(D)
Kelsey	36,474,530	10,537,322,390	.00346	6,981,200	24,165
Lac du Bonnet	97,391,070		.00924		64,524
Springfield	323,590,480		.03071		214,385
Brandon	934,406,650		.08868		619,064

5.2 Assessments Were Conducted In A Manner Consistent With Branch Methodologies

There are three internationally accepted appraisal methods: the cost approach, the sales comparison approach and the income approach. Depending on the nature of the property being valued, one or more of the approaches may be used by an appraiser. Application of these methodologies for property taxation purposes occurs through the "mass appraisal technique".

Cost Approach

The cost approach begins by establishing the value of the land on which the building sits, using sales of similar lands. To the land value is added the replacement cost of the buildings, less depreciation. In determining the replacement cost of a building the assessor considers such factors as age, size, condition, quality of construction and other features that influence value. The Branch has established over 12,000 cost components from which building/structure replacement costs are calculated.

The cost approach is best suited to value special purpose buildings that rarely, if ever, sell in the marketplace and which do not generate rental income to its owners. Examples of properties valued by the cost approach would include large industrial plants, communication towers and institutional buildings such as schools, hospitals and churches.

Sales Comparison Approach

The sales comparison approach utilizes property sales information to estimate the value of unsold properties.

Income Approach

The income approach is used for properties producing a stream of rental payments, for example, apartment buildings, shopping malls and commercially leased properties. The value of such properties is reflected through the income they are expected to generate over their economic life. Operating income before interest, depreciation, and income taxes is capitalized at an appropriate rate of return to determine market value.

Capitalization Rate

The capitalization rate is the rate of return a typical buyer would expect. The Branch calculates a capitalization rate for each type of commercial property and market area.

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Mass Appraisal Technique

In property assessment for taxation purposes, a combination of the cost and sales comparison approaches is the generally accepted methodology for assessing most properties. This is known as the mass appraisal technique.

Under the mass appraisal technique, an equitable cost base is established for each property. The cost base is adjusted to reflect current market values using 'market modifier' factors. Market modifier factors are derived from an analysis of comparable property sales.

Market Modifiers

A market modifier is a ratio (i.e., .80, 1.05) that is applied to the calculated replacement cost of a building (net of depreciation) to arrive at the market value of the property. The Branch calculates a modifier for each building type and neighbourhood. The market modifier indicates how much above or below replacement cost a building would likely have sold for in the reference year.

For residential buildings, an example of how a market modifier is determined is as follows:

- For residential buildings in a specific neighbourhood;
- A house sells for $110,000 in 1999;
- Bare land sales place the value of the land at $10,000;
- $110,000 - $10,000 = $100,000 attributable to the building;
- Replacement cost less depreciation is calculated to be $120,000;
- $100,000 / $120,000 = 0.83 (the market to cost ratio); and
- This ratio is calculated for all sold properties in the area and the median becomes the market modifier factor for other properties in the area.

For income producing properties, it is important to note that the income approach is only one of the approaches to value used by the assessor to estimate market value. Replacement cost and sales comparison values are also considered and the most appropriate value for the circumstances is chosen.

Farmlands in close proximity to major centers or recreation areas often have higher sales values than similar farmlands located in the remote areas of the Province. This added value is due to their location near more intensively developed land. The potential for development of the farmland drives up its value. Legislation provides the property owner with the option to apply for a 'Farm Use' assessment. Farmland subject to a Farm Use assessment is assessed and taxed on the basis of its value as farm land as opposed to the higher assessment which reflects the development influence. Farm use assessments remain in effect for as long as the property is used for farm purposes. A change in use of the property will result in a 'tax payback' on the difference between the two values for a period of up to five years.

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- This ratio is calculated for all sold properties in the area and the median becomes the market modifier factor for other properties in the area.

For income producing properties, it is important to note that the income approach is only one of the approaches to value used by the assessor to estimate market value. Replacement cost and sales comparison values are also considered and the most appropriate value for the circumstances is chosen.

Farmlands in close proximity to major centers or recreation areas often have higher sales values than similar farmlands located in the remote areas of the Province. This added value is due to their location near more intensively developed land. The potential for development of the farmland drives up its value. Legislation provides the property owner with the option to apply for a 'Farm Use' assessment. Farmland subject to a Farm Use assessment is assessed and taxed on the basis of its value as farm land as opposed to the higher assessment which reflects the development influence. Farm use assessments remain in effect for as long as the property is used for farm purposes. A change in use of the property will result in a 'tax payback' on the difference between the two values for a period of up to five years.

Observations and Recommendation

The Branch has developed an information system (the Manitoba Assessment Valuation and Administration System, referred to as MAVAS) that automates the assessment calculation, once required information is input. Business assessments and personal property assessments are calculated outside of MAVAS and then input into the system. While we discussed with Branch management various aspects of MAVAS controls dealing with input, access, change management, safeguarding of data and business continuity planning, we did not conduct detailed reviews. Nonetheless, as part of these discussions, our observations regarding any potential weaknesses or opportunities to strengthen MAVAS controls were brought to management's attention for their consideration.

As summarized in **Figure 6**, with respect to the 2006 general reassessment, we examined a sample of assessments from four municipalities, each municipality being the responsibility of a different district office. Specifically we recalculated the assessment value by using the property characteristics recorded in MAVAS (or operating income information for income producing properties) and manually applied the procedures and rates documented in the user manuals. We then compared our calculation with the value determined by MAVAS. We found that the assessment methodologies approved by the PMA were being correctly applied.

It is important to note that we did not reassess the properties examined. Specifically, we did not inspect each property in our sample to determine whether the noted building types were appropriate, whether characteristics were completely and accurately reflected in MAVAS, and whether other required judgments, as noted below, were reasonable.

As part of the assessment process, the Branch must develop and update various rates such as market modifiers, land rates and income capitalization rates. We discussed these processes with management but did not audit the processes or the resulting rates.

Figure 6

Results for the Sample of Assessments Examined from the 2006 General Reassessment							
Property Type	Mass Appraisal Assessment Methodology Employed	Sample Size by Municipality					Results re Use of PMA Approved Methodologies
		Lac du Bonnet	Springfield	Kelsey	City of Brandon	Total Sample	
Residential	Combination of Cost and Sales Comparison	5	5	5	5	20	Correctly applied
Farm	Combination of Cost and Sales Comparison	5	5	5	5	20	Correctly applied
Commercial	Combination of Cost and Sales Comparison	5	5	5	5	20	Correctly applied
	Income	1	1	1	3	6	Correctly applied

In conducting property assessments, the Branch uses either the cost, sales comparison or income approaches, as appropriate for the type of property being assessed. Management advised us that the approved assessment methodologies for the cost, sales comparison and income approaches adhered in all significant respects to the assessment standards included in the "Standard for Mass Appraisal of Real Property" issued by the International Association of Assessing Officers (IAAO). These standards cover the collection and maintenance of property data, property valuation approaches and various managerial considerations. The audit work we conducted on assessments performed by the Branch (as noted above), our numerous discussions with management and staff and our general review of the IAAO standards supported management representations that Branch methodologies were consistent with IAAO standards.

While defined processes have been developed for each of the assessment methodologies, considerable judgment must be exercised at numerous decision points. No process can eliminate the subjectivity involved at these decisions points, however, criteria or factors can be, and in many cases have been, defined to guide the decision-making process and ensure greater consistency among assessors when presented with identical or consistent conditions and property characteristics. The following are examples where assessors exercise professional judgment:

- Using the cost approach:
  - the extent of depreciation;
  - the type of building involved;
  - the condition of the building; and
  - the quality of the building.

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- Using the cost approach:
  - the extent of depreciation;
  - the type of building involved;
  - the condition of the building; and
  - the quality of the building.

- Using the sales comparison approach:
  - the appropriate building market modifier; and
  - the appropriate land rates and discounts.
- Using the income approach
  - the appropriate capitalization rate; and
  - the appropriate vacancy rate.

At the time of our audit, the Branch was in the process of updating and/or creating various manuals to assist assessors in appropriately and consistently conducting assessments. As part of our audit we used the existing Branch manuals and were thus able to provide management with our perspective on the clarity, completeness and general 'user-friendliness' of the manuals.

In applying the income approach to the valuation of commercial property we noted the following area of concern.

A Low Percentage Of Requested Income And Expense Statements Are Received

To apply the income approach, annual information is required on the income generated and expenses incurred by the property being assessed. The authority to obtain this information is provided by the Act in clause 16(1)(c).

In addition to being required for determining the assessed value of certain commercial properties, annual income and expense information from all income generating properties is used for setting parameters (e.g., capitalization rates and market expenses) in a reference year. Given the broad impact, ensuring the completeness and quality of the information on which the various parameters are based is critical.

The Act provides penalties for instances of non-compliance with requests for information. Specifically, section 64 provides that *"Where a person refuses or fails to supply information or documentation as required of the person under this Act or the regulations, the person commits an offence and is liable to a fine not exceeding $25 for each day that the person continues to refuse or fails to supply the information or documentation".*

In addition, the Act provides that *"Where a person failed to comply with a request for information or documentation under clause 16(1)(c), the board or panel shall specify in its order that any reduction in the assessed value of the person's property is not to take effect until the year following the year in which the order is made, or the year following the year to which the application relates, whichever is later".*

The Branch requests, where applicable, income and expense information on an annual basis. Branch records indicate, however, that the requested information is frequently not received (see **Figure 7**) even after follow-up letters are sent. Of

note is that the compliance rate between 2001 and 2006 decreased from 72% to 64%.

The Branch's request letters provide important information to the property owners on the above noted penalties for not providing the income and expense information or not providing it correctly. Officials noted that the Boards of Revision and the Municipal Board do specify, in cases where requested information was not provided to assessors, that any assessment reduction not take effect until the following year. In effect penalizing the taxpayer by an amount equal to the difference between the taxes payable based on the original assessment and the reduced taxes payable as a result of the reduced assessment. However, at the time of our audit, the Branch had not yet invoked the available fines. The Branch noted that the income approach had only been used extensively for three reassessments and was therefore a relatively new imposition for property owners. They were, therefore, reluctant to use the fines as a tool in generating a higher compliance rate.

In the absence of information from a property owner, assessors use the "typical" expense levels recorded in MAVAS. When actual expense information is supplied by a property owner, assessors consider this information as well as the "typical" expense levels recorded in MAVAS. Branch Officials noted that assessors would also look at multiple years of actual expenses to identify any annual inconsistencies. Stabilizing the expenses up or down may then occur. The "typical" operating expenses are determined by MAVAS using information obtained from similar properties. As such, the quality of the "typical" expenses included in MAVAS for a particular type of commercial property is dependent on obtaining a sufficiently high response rate from property owners.

Figure 7

Assessment Services Branch Mailers			
Year	**Mailers Sent**	**Mailers Returned**	**Percentage**
2001	3,053	2,191	72%
2002	3,159	2,124	67%
2003	3,374	2,271	67%
2004	3,344	2,423	72%
2005	3,783	2,569	68%
2006	3,890	2,477	64%

Source: Branch records.

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Source: Branch records.

Recommendation

That the Branch strengthen its information request practices in order to obtain a greater proportion of requested annual income and expense statements. Strengthened Branch practices could include the use of available fines.

Departmental Response

The Department recognizes the importance of annual income and expense statements as a key source of information for commercial property assessments and will be implementing the Auditor General's recommendation in a manner that is seen to be responsive and fair to all ratepayers.

5.3 Inspection Cycle May Not Be Optimal

Physical changes to properties require periodic physical reviews to maintain an accurate record of the property's characteristics. Complete and accurate property descriptions are needed to generate fair and equitable assessments.

The following excerpt from the IAAO Standard on Mass Appraisal of Real Property sets out the basic expectations for the frequency of inspections:

> *"A system should be developed for making periodic field inspections to identify properties and ensure that property characteristics are complete and accurate. Properties should be periodically revisited to ascertain that assessment records are accurate and current. Assuming that most new construction activity is identified through building permits or other ongoing procedures, a physical review at least every four to six years should be conducted, including on-site verification of property characteristics."*

Observations and Recommendation

As at February 1, 2006, Branch records indicated that over 35% of assessment roll entries (140,329 of the 392,434 in the 2006 assessment year) had not been inspected in the last ten years. 66 of the 198 municipalities had less than 50% of their properties inspected in that same time frame.

The Branch acknowledged that the inspection cycle did not meet the IAAO standard of between 4 to 6 years but was of the view that the standard was not reasonable in the Manitoba context. Officials cited the Province's largely

rural assessment base, the significant distances between properties and that certain property types, such as agricultural land, did not warrant inspection that frequently. The Branch referred to their move toward an inspection process that was more risk based. Officials noted that they regularly obtained and relied upon documents from authoritative sources such as zoning changes, building permits, and title documents (regarding the sale of a property) and conducted physical inspections of properties that were likely to have changes resulting from these triggers.

We agree with the move toward a risk based approach to prioritize the inspections to be conducted in a given year, but believe the spirit of the IAAO standard is that every property would be subject to inspection within a defined time period. A target inspection cycle has not been developed by the Branch.

Recommendation

That the Branch strengthen its risk based inspection approach by developing reasonable inspection cycles for each type of property.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and will establish guidelines for the frequency of property reviews to be included in the Branch's assessment manuals used by all assessors.

5.4 Branch Striving To Improve The Timeliness And Quality Of Sales Reviews

Recording reliable information on property sales is critical to the assessment process because sales information is used in developing market modifiers and in evaluating overall assessment performance. To ensure reliability, sale reviews are performed.

The Branch is notified of property sales by the Land Titles Office and records all property sales in MAVAS. Assessors determine whether the sale value only represents real property, whether there are any unusual circumstances surrounding the sale that affect the value and whether the information on file accurately reflects the land/building characteristics which existed at the time of the sale.

As part of the sales review process, properties may be inspected and contact may be made with the buyer or seller to obtain additional information as to whether the sale was an arm's-length, open-market transaction or whether other interests or conditions played a role in the sale price.

At the conclusion of the process, sales are labeled as either "valid" or "non-valid". Sales that are "non-valid", such as family sales, mortgage sales or estate sales, are not used when developing market modifiers or in evaluating assessment performance through ratio studies. In addition, a "non-valid" sale is not used as a comparator with other similar properties when a property assessment is appealed.

The Branch has identified as a performance measure the number of months needed to complete outstanding sale reviews. The Branch refers to this performance statistic as "months of outstanding sales" and has set a timeframe target of 3 months.

Observations and Recommendations

We found that the MAVAS system has been developed to allow the assessor to capture the information necessary to establish whether a sale was valid or not.

Based on our review, we identified two areas of concern:

- timeliness; and
- support for "stated confidence" in the validity of the sale.

Sale Reviews Were Not Always Timely But Performance Was Improving

The timeline with which sale reviews are performed is important because it helps ensure that Branch sale statistics and reports are reasonably up to date.

Since 2005 the Branch has been actively working to improve the timeliness of sale reviews. As at October 2005 Branch records indicated that only one district office had a "months of outstanding sales" figure that met the Branch's target of three months or less. For the nine other district offices, performance ranged from 3.58 months to 7.64 months. The overall Provincial timeframe was at 5.19 months. By April 2006, however, Branch records indicated that the overall Provincial timeframe was reduced to 2.97 months and that five district offices were meeting the three month target. This improvement was attributed by the Branch to the creation in 2005 of the Sales Coordinator position and renewed emphasis that inspections of sold properties were to be considered a priority over other inspections.

The goals of the Sales Coordinator are to:

- keep the backlog of Certificate of Title changes to a minimum, by reporting and allocating resources between the district offices as necessary;
- keep the timeframe for completing sale reviews to a minimum by helping the district with reporting and tracking mechanisms that would assist them in organizing their work more effectively; and

- ensure that the quality of sale reviews was high before entering the next reassessment by instituting quality control procedures.

To monitor performance in relation to the "months of outstanding sales" measure, the Sales Coordinator began generating, on a bi-weekly basis, a report that detailed the timeframes by district office. Officials advised that this information was being used to allocate resources between district offices as needed to handle workload issues. Management was optimistic that such monitoring would, over a reasonable amount of time, ensure that district office priorities did not conflict with the "months of outstanding sales" target and that the target was consistently met by all district offices.

The "months of outstanding sales" measure is a simple calculation of the number of outstanding sale reviews divided by the average monthly completion rate. It only attempts to measure the number of months needed to complete the outstanding sale reviews. It does not take other factors into account such as age of the sale or complexity of the needed review. For example, of the 7,500 sale reviews that had not yet been completed as at October 2005, 1,100 were for sales that originated in 2004. Further, of the 3,600 sale reviews outstanding as at April 2006, 2,200 were for sales originating in 2004 or 2005. We noted that the Branch does track the number of outstanding sale reviews for sales originating in a prior year (only back to 2004). We did not attempt to calculate a Branch statistic based on actual sale review completion time frames.

Recommendation

That the Branch prioritize the completion of reviews for older sales.

Departmental Response

The Department has implemented the Auditor General's recommendation for the next general assessment. By September 2008 all pre-2008 sales had been verified and inspected.

Support for the Validity of Certain Sales Could be Strengthened

We reviewed the documentation on 20 sale reviews for properties sold in 2005 (five from each of the four municipalities selected). The sale reviews were conducted between May 2005 and January 2006. Of the properties selected, five were bare land and 15 were properties with land and building(s). One sale (land and building) was appropriately considered non-valid because it was a sale to a relative with an assessment to sale ratio (ASR) of 4.03. The ASR is an indicator of the proximity of the assessed value to the actual sale price. An acceptable ratio

is between .9 and 1.1. For the remaining 19 sales (5 land only and 14 land with building) assessors indicated in MAVAS that they were confident with regard to the validity of the sales and the property characteristics. We are concerned, however, that support for the assessor's "stated confidence" was not adequately documented in the files we examined.

With respect to validity:

- Nine of the 19 were assessed as valid based only on the assessor's judgment. The basis for the assessor's judgment was not documented and no communication was made with the buyer or seller.

  Branch statistics revealed that between January 2004 and September 2005, 41% of residential sales involving land with buildings, were determined to be valid based on assessor judgment only. Branch officials advised that they had identified this practice as an area requiring scrutiny.

- Two of the 19 had ASRs that were less than .50. No explanations were included in the file to support this conclusion even though the file indicated the purchaser had been contacted.

With respect to property characteristics:

- 16 of 19 properties were subject to an external inspection but only 1 of the 14 properties that included a building was subject to an internal inspection. In addition, a review of the Multiple Listing Services (MLS) was not conducted on any of these 13 properties to confirm their characteristics (information included in MLS can be a reasonable alternative to interior inspection). We noted that the Branch's sale review guidance regarding residential buildings is silent regarding the need for interior inspections, or other alternative procedures, to confirm property characteristics at the time of sale.

Recommendation

That the Branch define the circumstances under which assessor judgment alone is sufficient to assess the validity of a sale and require documentation of the rationale in MAVAS.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and has taken measures to implement, including the drafting of policies for inclusion in the Branch's assessment manuals used by all assessors.

Recommendation

That the Branch establish guidelines as to which procedures should be used to verify residential property characteristics at the time of sale.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and has taken action to implement. Guidelines have been drafted for inclusion in the Branch's assessment manuals used by all assessors. Emphasis has always been placed on physical inspections of both the interior and exterior of buildings but documentation of the guidelines will be reinforced.

5.5 Improvements Required To The Construction Cost System

The MAVAS system includes a construction cost module. There are approximately 12,000 cost codes that require ongoing monitoring and updating (6,000 relating to residential and farm properties and 6,000 relating to commercial properties). Cost components are added to the system as changes occur to construction standards, materials and practices.

The rates included in MAVAS are used to determine the replacement costs of properties. Component costs are made up of materials and labour.

Sources for construction cost information include: builders, suppliers, assessors, and subscriptions to various publications such as Keyfax, Marshall & Swift, Means and Yardsticks. Information on labour rates is available from the Department of Labour and Immigration and the time to complete a construction task from the Walker costing system.

Of note regarding the costing system is that commercial buildings are costed based on the replacement cost of each building's specific components, whereas the costing of residential and farm properties is "model" based because of the considerable commonality in the types of structures found in each category. For example, a common residential building model is "2 storey residential average quality". Each model is costed using the predetermined building components for that model and a cost per square foot is determined.

Observations and Recommendations

Cost research not sufficiently up to date

When preparing for the 2006 general reassessment, Officials noted that much of their effort in updating the cost system for the 2003 reference year costs focused on recording commercial property cost codes within MAVAS. Given the magnitude of this task, the Branch noted that it had to reduce its cost research effort. The Branch stressed, however, that it attempted to maximize the utility of its research by focusing much of its effort on cost elements that would be applicable to all three property categories (residential, farm and commercial).

We selected ten commercial construction cost components to review the underlying support for the costs entered in the system. Documentation, however, was available for only seven of the ten cost components selected. Five of the seven cost components were based on the actual 2003 reference year costs for that cost component. For the two cost components that were not based on actual 2003 reference year costs, one was related to 1999 costs indexed to 2003 and one was a 1984 cost indexed to 2003.

We also selected 20 residential and farm property construction cost components to review. Documentation, however, was only available for six of the cost components selected. We found that five of the six cost components were based on 1988 information. Costs have been indexed since 1988 to reflect estimated market increases.

Officials advised that in developing the 2003 reference year replacement costs, all 1999 residential and farm property "model" costs were increased by 27%. The Branch determined that this rate of increase was reasonable as a result of their available research on certain of the underlying cost components. Documentation of this analysis was not available. To further test the reasonableness of the 27% increase, the Branch performed a review of the overall cost increases in eight homes that were part of the Parade of Homes. Branch staff compared the 1999 reference year costs to the 2003 reference year costs. Their analysis showed that the mean increase in home costs was 27%. On a home by home basis, however, we noted that the results showed a significant difference in percentage increases per home. There was a percentage increase as high as 49% and one as low as 12%. None of the percentage increases was in the 20 to 30% range.

Based on the limited supporting documentation that we were able to examine, we are concerned that many costs in the system may not have been recently updated and as such, not reasonably reflect the actual 2003 reference year costs.

Recommendation

That the Branch develop, document and implement a systematic approach for researching and updating component costs and that this be conducted in time for the next general reassessment.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and has taken measures to implement. Guidelines are being strengthened to define the methodologies for ensuring up to date component costs and will be included in the Branch's assessment manuals used by all assessors.

Cost System – Inadequate Information

As noted above, support for 17 of our cost requests was not available for our review. Officials advised that support for costs entered in the system was stored in various binders but that the individual information was difficult and time consuming to find. We noted that the automated system did not allow for a description of the information supporting the inputted cost rates nor did it record and track revision dates. In our view such information would facilitate the ongoing maintenance of the component cost system.

Recommendation

That the Branch use MAVAS or an alternative mechanism to better track support for component costs.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and has made substantial progress towards implementation. Cost manual improvements have been made, increasing the efficiency of data recording and uploading to MAVAS and computerized records of cost information now contain full descriptions of sources.

5.6 More Comprehensive Quality Control Reviews Would Help Mitigate Risks

Observations and Recommendation

The Sales Coordinator role was created in 2005 to help ensure the quality of sales data was high. We acknowledge the value of this function. The following risk conditions, however, support the need for a more comprehensive quality control review function:

- The significant volume of assessments;
- The need to ensure consistency between district offices and between assessors;
- The complexity of certain assessments;
- The large number of judgments that must be made on each assessment;
- The potential for human error; and
- The broad impacts of certain decisions/processes such as developing market modifiers, capitalization rates and determining component costs.

We believe that a dedicated quality control review function to examine compliance, by each district office, with Branch policies and procedures on managing the assessment service would further complement existing management practices aimed at ensuring quality.

Recommendation

That the Branch develop as part of its quality assurance efforts, a review function, independent of district operations, to perform quality control reviews over all aspects of assessment services.

Departmental Response

The Department supports and accepts the Auditor General's recommendation and has made significant progress towards implementation. For the next general assessment, quality control reports have been substantially revised and a new accountability process is being adopted as recommended by the Auditor General.

MAVAS, with its ongoing development, is particularly suited to quality control functions - not only those applicable to reassessment analysis but also to the full breadth of assessment administration. The great flexibility inherent in

MAVAS has enabled the Branch to conduct large volumes of ad hoc reviews with significant benefit to the accuracy of data and efficiency of operation. Much of the quality control is now being systemized and will be delivered through an improved accountability process. The ad hoc review capabilities of MAVAS will also continue to be relied upon to ensure that the Branch achieves continuous improvement.

5.7 The Branch Has Recently Begun To Explore The Usefulness Of Ratio Studies

In mass appraisal, or property assessment, ratio studies are the primary tool of performance analysis. Ratio studies measure two important aspects of accuracy in property assessment - appraisal value relative to market value, and appraisal uniformity (that is, whether individual property values are fairly and equitably treated). A ratio study is a form of applied statistics, because the analyst draws conclusions about the appraisal of the entire population of assessable properties, based on information about those properties that have sold during a specified time period. The sold properties constitute a sample.

In ratio studies, stratification is the sorting of properties into relatively homogeneous groups based on use, physical characteristics, or location. Common strata are valuation model (or approach), construction class, neighborhood, size and age. Each of these strata may be considered within a property class or competitive market area.

The reliability of a ratio study depends on the representativeness of the sample. Representativeness is a function of several statistical constraints, including sample size. In general terms, the greater the sample size, the more reliable the result of the ratio study. If insufficient data are available, clustering a number of strata or property groups within different neighbourhoods or jurisdictions may be possible.

Informed, reasoned judgment is required in the application of statistical analysis and in the interpretation of ratio study results. Ratio study results can identify problems in valuation, shifts in market segments and the need to revise valuation policy and assessment methodologies such as depreciation schedule revisions and market factor revisions. In addition, the results of ratio studies can provide valuable information that can assist the assessor in allocating resources, on a priority basis, to areas where results are less acceptable.

Observations and Recommendation

We engaged external consultants to prepare a detailed report on the Branch's use of ratio studies. The consultants' report was provided to management for their consideration. Our general observations are discussed below.

The Branch is in the early stages of developing and implementing policies and procedures to support the use of ratio studies. Ratio studies have been employed in the past two general reassessments (2002 and 2006) but on a limited basis. For the 2006 general reassessment (the 2003 reference year), the Branch conducted a number of ratio studies to measure the overall quality of assessments. The ratio studies included seven different statistical tests that are identified in IAAO standards as important to measure assessment results.

Because the Branch has only recently begun to use ratio studies as a performance assessment tool, it is premature to conclude on how well ratio studies are being used to analyze performance and to what extent they may have contributed to improved quality in assessment products and services.

A significant challenge for the Branch in effectively applying ratio studies to evaluate assessment performance is the sufficiency of annual sales in various geographic areas. In our discussions with Branch management, a number of potential approaches were presented on how to maximize the use of sales data available to them, including clustering of neighbourhoods and broadening time-frames.

Recommendation

That the Branch develop and implement a plan on how best to maximize the use of ratio studies to evaluate assessment performance.

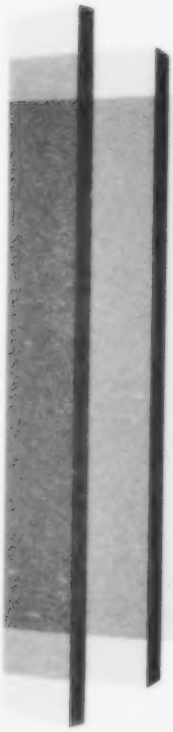
Departmental Response

The Department supports and accepts the Auditor General's recommendation and is actively working towards the inclusion of policies outlining the timing, review and application of ratio studies in the Branch's assessment manuals used by all assessors.

6.0 Summary of Recommendations

The recommendations included in this report are itemized below.

- That the Branch strengthen its information request practices in order to obtain a greater proportion of requested annual income and expense statements. Strengthened Branch practices could include the use of available fines.
- That the Branch strengthen its risk based inspection approach by developing reasonable inspection cycles for each type of property.
- That the Branch prioritize the completion of reviews for older sales.
- That the Branch define the circumstances under which assessor judgment alone is sufficient to assess the validity of a sale and require documentation of the rationale in MAVAS.
- That the Branch establish guidelines as to which procedures should be used to verify residential property characteristics at the time of sale.
- That the Branch develop, document and implement a systematic approach for researching and updating component costs and that this be conducted in time for the next general reassessment.
- That the Branch use MAVAS or an alternative mechanism to better track support for component costs.
- That the Branch develop as part of its quality assurance efforts, a review function, independent of district operations, to perform quality control reviews over all aspects of assessment services.
- That the Branch develop and implement a plan on how best to maximize the use of ratio studies to evaluate assessment performance.



Legislative Assembly

Chapter 4: Members' Allowances

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Appendices

Appendix 1: The Members' Allowances Regulation

Appendix 2: The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

1.0 Summary of Our Findings

The Office of the Auditor General conducts an annual audit of the financial statements of the Allowance Claims for the Members of the Legislative Assembly. The financial statements disclose the total amounts spent by each Member for each allowance category for the fiscal years ended March 31. As a result of our audit, we issue an opinion on fairness of presentation of that statement.

In June 2008, we decided to conduct a more detailed audit of the Allowance Claims to go beyond the scope of a financial statement audit. Our audit covered 100% of Members' Allowance Claims for the two-year period from April 1, 2006 to March 31, 2008 excluding Members' Compensation (Indemnities) and salaries paid to constituency staff. Our audit also covered the Members' Printing Allowance for that same period.

Nothing came to our attention during this audit to suggest that material inappropriate spending was taking place. Our audit discovered that Members spent within the allowance limits. However, many of the allowance claims did not have adequate documentation, and therefore we are unable to provide assurance that the Members' Allowance Claims for the years ended March 31, 2007 and 2008 were all related to expenses for non-partisan access and service to constituents. Our audit did raise concerns around the existing culture and the current monitoring practices, and identified the need to update and modernize the rules.

We found that a culture has come to be adopted that permits expenditures without appropriate attention to details. Instead of exercising their monitoring role, we found examples of the Members' Allowances Office (MAO) taking a deferential role in relation to the Members. We became aware of MAO staff preparing or partially preparing claims for some Members and processing expenditures for items which should not have been permitted.

In a number of sections of this report we outline differences between the *Members' Allowances Regulation* (Regulation) and current practices. The differences are the result of Legislative Assembly Management Commission (LAMC) decisions and interpretations made by successive Commissions over a number of years. These amendments to the rules have, in our opinion, reduced the effectiveness of control procedures and now stray significantly from the intent of the Regulation. We believe that current practice would not be aligned with what citizens would expect from elected Members. Of significance is the difference between the Regulation and practice around office equipment, computers and furniture (capital assets) as well as in the nature of documentation required to be submitted to support Member donations (cash and products) and other contributions made to constituents and claimed under the Representation category.

With regard to capital assets, we found that while the Regulation clearly states that capital assets are "property of the Legislative Assembly", Members have been allowed to retain these items for personal use after a depreciation period.

With respect to required documentation, the Regulation specifically refers to the need for the Member to submit a "receipt" or in the case of a donation to a charitable or non-profit organization, an "official receipt". We found that often Members are not providing the required documentation. The Regulation does permit Members to complete a "Statutory Declaration Form" in the event that a receipt is lost or unattainable, which Members used over 400 times during the period of our audit. This practice is not adequate to demonstrate accountability over the use of public funds.

We also found that the Regulation has not been rigorously reviewed to ensure that it anticipates all expenditure categories and reflects a contemporary view of public expectations and best practices. There has been a need for the LAMC to provide interpretations when situations arise which are not clearly described in the Regulation. Most allowance categories include examples of this, but we found that clarity was particularly needed within Communication Charges, Donations and Gifts, Travel and Living Expenses.

Contemporary expectations around accountability and transparency are not reflected in the current Regulation. A separate regulation around disclosure is issued, being *The Members' Salaries, Allowances and Retirement Plans Disclosure Regulation* (Disclosure Regulation). Ironically the Disclosure Regulation is not readily available to the public. *The Legislative Assembly Act* requires that financial statements be prepared annually, summarizing the categories of expenditures. Our office audits these financial statements and they are made available to the public in Volume 3 of the Province's Public Accounts. However, the Disclosure Regulation only makes information about detailed transactions available upon request and after paying applicable fees.

To both prevent inappropriate expense reimbursements and protect Members from allegations of improper spending, a number of changes would have to be implemented. There is a need to update the rules, to clarify the documentation required to support the claims and to strengthen the monitoring practices. Section 6 of this report outlines our overall recommendations to improve the system and summarizes a number of items to be addressed when amending the rules.

2.0 Audit Objective and Scope

Our overall audit objective was to determine whether Member Allowance and Printing Claims were appropriate, adequately supported, and paid to Members in accordance with the *Members' Allowances Regulation.*

The audit covered 100% of the Member Allowance and Printing Claims for the two-year period from April 1, 2006 to March 31, 2008. Our work was conducted between June 2008 and January 2009.

Member Allowance and Printing Claims totaled over $2.9 million for each year under review and included claims from 57 Members in 2006/07 and 66 Members in 2007/08 (a general election was held on May 22, 2007). Areas excluded from the audit were Members' Compensation (Indemnities) and salaries paid to constituency staff.

3.0 Background

3.1 The Legislative Assembly Management Commission

The Legislative Assembly Management Commission (LAMC) was established in 1983 by *The Legislative Assembly Management Commission Act.* The LAMC is comprised of the Speaker of the Legislative Assembly, who is the Chairperson, four Members of the Legislative Assembly (MLAs) appointed by the Government caucus and three MLAs appointed from the official opposition caucus. If there are one or more other opposition parties, one member of the Assembly is appointed by the caucus of the largest other opposition party. The Clerk of the Legislative Assembly, appointed by Order-in-Council, is the Secretary to the LAMC.

Section 6 of *The Legislative Assembly Management Commission Act* sets out the duties and responsibilities of the LAMC which include:

- Carrying out those Rules of the Assembly and those provisions of *The Legislative Assembly Act* which relate to the financial management of the Assembly.
- Reviewing the estimates and staff requirements for the Legislative Assembly and for the Auditor General, the Chief Electoral Officer, the Children's Advocate, the Ombudsman and their respective offices.
- Responsibility, in cooperation with the Government, for the provision of facilities and services required by the Members of the Assembly, by the caucuses of the various parties to the Assembly and by the leaders of the parties in opposition.

- Formulating administrative policies in respect of the Clerk and the offices required for the administration of the Assembly, *The Legislative Assembly Act* and *The Legislative Assembly Management Commission Act.*

Under *The Legislative Assembly Act*, the LAMC may amend a Regulation made by the Commissioner if the amendment is of an administrative or technical nature or if the LAMC considers the amendment necessary to address unforeseen circumstances arising after the last Commissioner's report was submitted to the Speaker.

3.2 Commissioner

Under Section 52.7 (1) of *The Legislative Assembly Act*, the LAMC must appoint a Commissioner, whose responsibility is to decide on the appropriate salary, allowances and retirement benefits for MLAs and to make regulations to implement these decisions. *The Legislative Assembly Act* requires a Commissioner to be appointed within six months after each general election, except in certain circumstances. The Commissioner must submit a report to the Speaker setting out his or her decisions concerning the salaries, allowances and retirement benefits for MLAs. The Speaker then tables the Commissioner's report in the Assembly. After submitting the report to the Speaker, the Commissioner must make any regulations necessary to implement his or her decisions. Regulations made by the Commissioner, including *The Members' Allowances Regulation* (Regulation), and *The Members' Salaries, Allowances and Retirement Plans Disclosure Regulation* (Disclosure Regulation) come into force on the day specified in the Regulation. The term of office of the Commissioner ends one year after the Regulation is made or comes into force, whichever is later.

The Regulation outlines the various allowances that are available to Members, eligibility criteria for each allowance, the annual maximum amounts for each allowance, and what types of expenses are authorized expenses for each allowance. The Regulation is formatted to show two columns. The right hand column provides an explanation of the left column on each page of the Regulation. The types of allowances, discussed in more detail later in this report, include:

- Constituency Allowance;
- Travel Allowance;
- Living Allowance;
- Printing Allowance;
- Commuter Allowance; and
- Committee Allowance.

The role of the independent Commissioner was established in *The Legislative Assembly Act* in 2002 with the Commissioner's recommendations subject to a vote by the Legislative Assembly. In 2004, *The Legislative Assembly Act* removed the requirement for Members to vote on the Commissioner's recommendations. The decisions of the Commissioner are now binding.

After the May 2007 election, a Commissioner was appointed and his report dated December 19, 2007 was submitted to the Speaker. The regulations came into effect on January 14, 2008.

3.3 Members' Allowances Office

Members' Allowances are managed by the Members' Allowances Office (MAO). The MAO is an Office of the Legislative Assembly and is not overseen by the government. The MAO is managed by the Executive Director, Administration and Finance, of the Legislative Assembly. The Executive Director is accountable to each of the Caucus Office Chairs, the Opposition Leaders and the Speaker for the general administration of their respective offices. For administration of the Members' Allowances Claims the Executive Director is accountable to the Speaker.

Responsibilities of the MAO include:

- Providing financial services to MLAs with respect to their statutory allowances;
- Providing advice and assistance on all matters related to Members' Allowances; and
- Managing capital purchased through Members' Allowances.

As previously noted, LAMC has the authority to formulate administrative policies required to carry out administration of *The Legislative Assembly Act*, which would include administration of the Regulation. The MAO has developed the *Members' Allowances Manual* (Manual) for this administrative purpose, to provide Members with the specific information needed to determine eligibility for an allowance, how amounts are calculated and to understand the criteria for reimbursement. The Manual also provides information concerning what expenses can be claimed and what is required to submit an expense claim. Each year the MAO prepares a table for inclusion in the Manual showing the current annual maximum amounts and category limits for each allowance. This table and any other updates to the Manual, including changes to the Regulation as prepared by the Commissioner, are forwarded to each Member. MAO staff also provide training to new MLAs and Constituency staff to give them an overview of the types of allowances they are entitled to claim and the claims process.

There are separate claim forms for each type of allowance. Members are required to sign each claim form and attach supporting documentation such as receipts. Claims are then forwarded to the MAO for approval and processing. Each claim is examined and approved by two staff members of the MAO. All claims are entered into the Members' Allowances Tracking System (MATS) which is a computerized program used to track expenses by allowance type for each Member. A Member's maximum entitlement for each allowance is entered into MATS and the system can generate reports to show the extent of the expenses incurred to date by each Member by allowance category and the balance of funds available. MATS will not allow an expense to be processed if the maximum entitlement amount would be exceeded.

An allowance claim can be paid to the Member, or the Member can request that payment be made directly to the supplier, if the request is accompanied by supporting documentation such as an invoice or contract. In either case the expense is charged to the applicable allowance of the Member.

Appropriate internal controls are essential to ensure that all transactions processed are legitimate. All transactions should be adequately documented, appropriately supported, recorded accurately and subject to a formal approval process. The MAO is responsible for providing this internal control system.

3.4 MLA Allowance and Printing Claims Examined

The Members' signature on a claim form is certification by the Member that an expense has actually been incurred in compliance with the Regulation. The Member also has the responsibility for submitting appropriate documentation to support the claim.

Figure 1 is a summary of the dollar value of claims examined during our audit by allowance type. The Manitoba Legislative Assembly consists of 57 Members. For the year ended March 31, 2007 allowance claims were examined from a total of 57 Members. An election was held during the year ended March 31, 2008 and as a result of some Members not seeking re-election, and due to turnover of other Members, allowance claims were examined from a total of 66 Members.

Figure 1

MLA Allowance and Printing Claims Examined		
	For the Year Ended March 31, 2007	For the Year Ended March 31, 2008
Constituency Allowance*	$1,663,526[1]	$1,664,991[2]
Travel Allowance	659,432	649,078
Living Allowance	402,683	391,300
Printing Allowance	236,200	238,950
Commuter Allowance	2,459	3,438
Committee Allowance	1,168	615
Total	**$2,965,468**	**$2,948,372**

* Does not include Constituency staff salaries

(1) Actual Constituency Allowance Claims were approximately $192,000 lower than the Constituency Allowance entitlement available to Members for the year ended March 31, 2007.

(2) Actual Constituency Allowance Claims were approximately $574,000 lower than the Constituency Allowance entitlement available to Members for the year ended March 31, 2008. The under-spent amount for the year ended March 31, 2008 includes an amount of approximately $394,000 for 9 Members who were entitled to a full year Allowance on April 1, 2007 but due to these Members not running or being defeated in the May 2007 election they did not spend their entire allowance.

Source: Members' Allowances Office claim files.

4.0 Findings – Overall System

This section of the report outlines our audit findings that were of a general nature and relate to the overall Members' Allowances system rather than to a specific type of allowance.

4.1 Transparency and Accountability

The Department of Finance is required to include a Report of Amounts Paid to Members of the Assembly each year within the Public Accounts of Manitoba. The amounts paid to each Member under the headings of Compensation (indemnities, other compensation and the Crown contribution to retirement benefits) and Reimbursement of Expenses (allowances and other expenses reimbursed) are provided in the report. Our office conducts an annual audit of this information.

Regulations made under *The Legislative Assembly Act*, including the regulation related to the Members' Allowances are published in Part 1 of *The Manitoba Gazette* which are only available to subscribers.

The public disclosure requirements of the Members' Allowances are stated in *The Members' Salaries, Allowances and Retirement Plans Disclosure Regulation* (Disclosure Regulation). Within the Disclosure Regulation the public is entitled

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to inspect a record that relates to a Member's Allowance Claim, and may obtain a copy of the record upon payment of applicable fees. These records are available at the MAO during normal working hours.

Allowance records available for public disclosure include records submitted by Members to establish eligibility for the allowance and to claim payment, including any accompanying documentation, the record that states the amount of the allowance, the effective date of the amount, how it was arrived at or adjusted, and the totals claimed to date.

A copy of a Member's Annual Report is to be available for public inspection in their Constituency office for five years.

Observations

- Most other regulations are made under *The Regulations Act* and appear as part of the Continuing Consolidation of the Statutes of Manitoba (CCSM) which are available on the Government of Manitoba website.
- The Manual prepared by the MAO to provide additional guidance to Members is not available to the public.
- LAMC interpretations of the Regulation and/or Manual are not available to the public.

Conclusions

- The current disclosure practices are not sufficient to inform the public about Members' Allowance Claims.
- The Annual Report of Amounts Paid to Members of the Assembly does not provide the public with detailed information about where funds are being spent.
- The Members' Allowances Regulation and The Disclosure Regulation should be readily available to the public. Publication in Part I of *The Manitoba Gazette* is not sufficient as it is only available to subscribers.
- By not making the Manual or LAMC deliberations available to the public, transparency around Members' Allowances and Printing Claims is weakened.

Items to be Addressed

- That the Regulations and detailed information about Members' Allowances be available to the public on the Government of Manitoba website.
- That the Manual and LAMC deliberations be a matter of public record.

4.2 Adequacy of Supporting Documentation/Proof of Payment

Section 5 of the Regulation states:

> *"A claim for payment of an authorized expense*
>
> *(a) must be made in a form approved by the Speaker; and*
>
> *(b) unless it is payable at a civil service rate, must be accompanied by*
>
> *(i) a receipt, or*
>
> *(ii) a statutory declaration of the member or a person with personal knowledge of the claim verifying that the expenditure was incurred and explaining the absence of a receipt."*

The Manual states that, *"an original receipt or original invoice marked paid must be submitted for each expense being reimbursed. A cancelled cheque may be submitted or a credit card slip, but only if the slip fully details the expense"*. The Manual also states that, *"where you have paid an expense and no other evidence of payment is available, you may write on an invoice or copy of your cheque the following: 'Certified paid on (indicate date of payment)' and include your signature"*.

According to the Manual, in the event that a receipt is lost or unattainable, the Member must complete a Statutory Declaration form indicating that the expense was incurred and provide the particulars about the expense. The Member is required to sign the form and the signature must be witnessed by a Commissioner for Oaths. Staff members of the MAO are Commissioners for Oaths.

Observations

- Over the two year period of our audit we noted over 700 occasions, totalling approximately $158,000, where payments were made with only a copy of the invoice or a statement from the supplier supporting the claim.
- We found approximately 50 instances totalling $3,600 where duplicate payments were made to Members. We provided this information to the MAO for correction. We also found many instances where MAO staff had detected duplicate claims through their review process when Members made a claim for an expense that had previously been paid to them. In those instances the MAO staff disallowed the duplicate claims.
- Approximately 370 claims totalling $78,900 were paid with no sales receipt or invoice on file, or there was no adequate support for proof of payment. For example, an invoice such as a subscription renewal or a registration form for a conference was available; however, there was no proof of

payment provided. In some cases, Members provided a copy of a pre-issued cheque, marked certified paid on the available documents or submitted a signed Statutory Declaration form.

- For approximately 100 instances totalling $8,700, we were unable to determine the purpose of the expense claimed due to a lack of documentation provided on the claim. Examples of these purchases included books, bulk food and other miscellaneous items.
- Members claimed expenses for wages and professional services which were not supported by a formal invoice or contract in approximately 30 instances totalling $13,900. Adequate support for proof of payment was also an issue in some of these instances.
- In approximately 60 instances totalling $15,000, errors were made and not found by MAO staff through their review procedures. The majority of these errors were addition and rate miscalculations, as well as expenses charged to the wrong category or charged to the wrong fiscal year. We provided this information to the MAO for correction. We also found many instances where MAO staff detected similar errors through their review process and adjusted the claims before processing through MATS.
- We became aware that MAO staff were preparing, or partially preparing claims for some Members. In some cases, the Member would drop off their receipts and other supporting documentation and MAO staff would prepare the entire claim for the Member. In other cases, such as for travel claims, the Member would provide partial information such as the number of meals or the total dollar amount claimed for personal mileage. MAO staff would then insert the remaining details to support the claim. All of these claims were ultimately signed by the Members.
- During our audit we noted that the use of the Statutory Declaration forms by Members was fairly significant. Over the two year period of our audit we found that Members used these forms on over 400 occasions.
- The stated purpose of the Statutory Declaration form is that they are to be used "in the event a receipt is lost or unattainable." From our review of available documentation, it appeared that some Members utilize the Statutory Declaration form because it is easier than obtaining supporting documentation such as receipts. For example, a claim for donations of $250 to 8 different School Parent Council groups, amounting to $2,000 on one claim, was supported by a Statutory Declaration form. Typically, Schools and Parent Councils will issue receipts for donations received.
- A Commissioner for Oaths is required to witness a Statutory Declaration.

- We also noted a few instances where the Statutory Declaration forms were signed by constituency staff and not by the Member as required in the Manual.

Conclusions

- Our audit noted many instances of payments being made without adequate supporting documentation and/or proof of payment.
- The Regulation requires a receipt. The Manual provides guidance as to the acceptable support required for reimbursement; however, the guidance is unclear in that it ranges from requiring an original receipt/invoice to accepting a copy of a cheque. In addition, there is no limitation in either the Regulation or the Manual, as to the acceptable frequency of Statutory Declarations which would permit reimbursement without any documentation. In our view, the Regulation intended for proof of payment to be provided except in unusual circumstances. Our audit found that Members are not consistently providing original documentation and proof of payment to support claims.
- Neither the Regulation nor the Manual specifically requires a description of the reason for the expenditure, although the claim forms reproduced in the Manual do provide a section to be completed called "description". We noted Members were not always providing a description of the expenditure. Without this information documented, it is not possible for the MAO to determine whether a claim is for an authorized expense unless they obtain additional information from the Member. Although this additional information may have been obtained, in a number of instances it was not documented on the claim.
- There should be a separation between those preparing the claims and those who approve the claims. Having staff of the MAO complete Member claims is in conflict with their monitoring responsibilities.
- By accepting multiple types of documentation, such as copies of invoices, suppliers' statements, copies of a pre-issued cheque, and Statutory Declaration forms, the risk of an item being claimed more than once or that a Member would be reimbursed for an expense that was never incurred increases. Limiting acceptable documentation to the original would eliminate this risk.
- During our audit we found that many Members had set up a bank account for Constituency business and would submit bank statements to claim related bank charges. The submission of bank statements and cheque information to the MAO on a monthly basis would provide support for proof of payment.

Items to be Addressed

- That Members be reimbursed only for those claims that are supported with original documentation including proof of payment and that have the intended purpose of the expense documented.
- That Members provide the MAO with constituency bank statements and cheque information on a monthly basis.
- That the use of Statutory Declaration forms be eliminated.

4.3 Year End Cut-off of Member Claims

In June of each year, the MAO prepares an Annual Report for each Member of the total expenses claimed in the previous fiscal year for each allowance, by category. Each Member is to review their report for accuracy, sign the report, and then return it to the MAO. The MAO then submits the Annual Reports to the Speaker by June 30th of each year for tabling in the Legislative Assembly. A copy of a Member's Annual Report is to be kept available for public inspection at their Constituency Office for a period of five years.

Observations

- During our audit we noted that there is no cut-off date for the processing of Member claims in a fiscal year. For example, if a Member was to submit a claim today for a constituency allowance expense which relates to a prior fiscal year, this claim would be posted in MATS to that prior year period if the Member had not reached the maximum entitlement for their constituency allowance in that year.
- We found instances where Members submitted a claim for the previous fiscal year after their Annual Report had been finalized and the claim was processed, and as a result their Annual Report for that fiscal year was no longer accurate.

Conclusion

- Under the current procedures, the Members' Annual Reports for past years are not accurate if claims are processed subsequent to the tabling of these Reports in the Legislative Assembly.

Item to be Addressed

- That a cut-off date be established for the submission of Member claims for each fiscal year.

5.0 Findings – By Type of Allowance

The following sections of the report include our detailed audit findings by type of allowance. Each section includes a brief description of the allowance, the nature and extent of expenses for each allowance, and our observations including exceptions, conclusions, and items to be addressed.

The Regulation defines an authorized expense as *"an expense authorized to be paid out of an allowance under this regulation"*. LAMC has interpreted this to mean that they may make decisions to authorize expenditures not specified in the Regulation. However, we interpret this to mean that unless the Regulation specifically identifies an expenditure as being authorized that expenditure falls outside of the Members' Allowances and should be disallowed.

5.1 Constituency Allowance

All Members are entitled to reimbursement for authorized constituency expenses for the purpose of providing non-partisan access and service to constituents.

There are four categories of expenses within the Constituency Allowance:

- Office Space;
- Office Operation;
- Representation; and
- Constituency Staff Salaries (not included in our detailed audit).

Figure 2 provides a summary of the nature of expenses included under each category of expense within the Constituency Allowance.

Figure 2

Category of Expenses		
Office Space	**Office Operation**	**Representation**
• Office rent • Office renovations • Office signs • Utilities • Office cleaning	• Advertising (non-partisan) • Bank charges • Telephone/cell phone • Office supplies • Insurance • Letterhead/envelopes • Office equipment and furniture (Capital Assets) • Maintenance of office equipment/computers • Travel expense overages • Printing expense overages	• Donations • Hospitality • Meals with constituents • Caucus meals • Flags and pins • Event tickets • Scholarships/ bursaries • Raffle tickets • Cards and flowers

Source: Members' Allowances Manual

A Constituency Allowance maximum entitlement is determined annually for each of the Winnipeg, Southern and Northern regions. The annual maximum limit for Representation expenses is 15% of the Members' Constituency Allowance entitlement.

Figure 3 is a summary of the Constituency Allowance expenses claimed by category for the two years under review.

Figure 3

Constituency Allowance Expenses Claimed		
	For the Year Ended March 31, 2007	**For the Year Ended March 31, 2008**
Office Space Expenses	$ 466,291	$ 501,244
Office Operation Expenses	867,556	823,964
Representation Expenses	329,679	339,783
Total Constituency	$1,663,526	$1,664,991

Source: Members' Allowances Office claim files

The following sections include our detailed audit findings specific to each of the three categories of expenses under the Constituency Allowance – Office Space, Office Operation and Representation.

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Category of Expenses		
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The following sections include our detailed audit findings specific to each of the three categories of expenses under the Constituency Allowance - Office Space, Office Operation and Representation.

5.1.1 Office Space (2007 - $466,291, 2008 - $501,244)

The majority of office space expenses were for constituency office rent; $399,707 in 2007 (86%) and $416,694 in 2008 (83%). The Manual states that constituency office leases must be filed with the MAO. As per the Regulation, the MAO pays office rent directly to the landlord; however, a signed claim form is required to be on file to support each payment. Other expenses under Office Space include office renovations, office signs, utilities and office cleaning.

Observations

- Constituency office leases, supporting the monthly office rent claims, were all on file at the MAO.
- All claims for office rent by Members were signed by the Members, approved by MAO staff and entered into MATS accurately.

Conclusion

- Office space expenses related to constituency office rent were appropriate, adequately supported and in accordance with the Regulation.

5.1.2 Office Operation (2007 - $867,556, 2008 - $823,964)

The most common office operation expenses include advertising, bank charges, telephone and cell phone, office supplies, insurance, letterhead/envelopes, office equipment and furniture (capital assets), and maintenance of office equipment/computers. Also, when a Member's Travel or Printing Allowance is depleted, any overages incurred may be claimed under the category of office operation expenses, if funds are available.

Capital Assets

The Regulation states that all capital assets are the property of the Legislative Assembly.

Office Operation expense includes capital furniture and equipment purchased by Members. The Manual states that furniture and equipment items with a value of $161 or greater for 2007/08 ($158 or greater for 2006/07), are considered a capital asset and therefore are the property of the Legislative Assembly.

When a capital asset is purchased, the sales receipt detailing the item purchased is to be submitted with the claim for recording by the MAO. The MAO records each capital item purchased in the Legislative Assembly Capital Inventory worksheet. Each capital asset is assigned a label number and the label is forwarded to the Member to attach to the item.

The Regulation states that MAO *"keeps a record of capital property and its depreciation. When capital property is fully depreciated it is 'taken off the books'."* This is stated in a right-hand column of the Regulation which provides an explanation of the Regulation.

The MAO maintains inventory records of the capital assets by Member and also calculates annual depreciation on each item using the following depreciation rates set by LAMC:

- Computers and printers are depreciated over 3 years, at an accelerated rate of 50% over each 12 month period;
- All other equipment is depreciated over 5 years on a straight line basis; and
- Furniture is depreciated over 10 years on a straight line basis.

According to the Manual when a capital item has been depreciated fully and has no book value the item will no longer be tracked by the MAO. Responsibility for these items will be turned over to the Member who can decide whether to turn the item over to the MAO for disposal, donate the item, or retain the item for personal use.

The explanation section of the Regulation states that *"when a Member ceases, capital property must be purchased, returned or donated in accordance with the policy and procedures established by LAMC"*. The Manual states that outgoing Members can purchase computers and printers charged to their Constituency Allowance at the depreciated cost, or donate computers and printers to a school or charity on behalf of the Legislative Assembly.

Observations

- We found that the capital asset inventory records do not include who the asset has been assigned to (the Member or a constituency staff member) or the location of the asset (the constituency office or Member's office in the Legislative Building). Further, the MAO does not conduct periodic inventory counts of these assets.
- The existing practice of allowing Members to retain fully depreciated capital assets for personal use creates the risk that Members may purchase capital assets that exceed the requirements of a Constituency office. We observed instances where Members purchased high-valued computer equipment which would have had a useful life in excess of the depreciation period. We noted that it is the policy of Manitoba Government Departments to donate surplus computer equipment to Computers for Schools and Libraries.

Conclusions

- Internal controls over capital assets are inadequate. Although the MAO tracks capital assets by Member, it does not obtain sufficient information to ascertain the location of the asset and to whom it has been assigned. Also, the MAO does not conduct periodic inventory counts.
- The decision to turn items over to the Member once fully depreciated is inconsistent with the Regulation which states that all capital items are the property of the Legislative Assembly. There is no explanation in the Regulation as to why it requires depreciation to be calculated. The details as to how fully depreciated items are to be disposed is described in the Manual but it is not referred to in any way in the Regulation.
- The explanation section of the Regulation that permits outgoing members to purchase capital items is inconsistent with the section of the Regulation that states that capital items are the property of the Legislative Assembly.

Items to be Addressed

- That the Regulation be complied with in that all capital assets are the property of the Legislative Assembly.
- That the MAO capital asset inventory records include the location of the asset and the person who has been assigned the asset. For control purposes, MAO should conduct unannounced periodic inventory counts on these assets.

Capital Carry-Over

Section 15(2) of the Regulation states the following concerning capital carry-over:

> *"If a member's constituency allowance for an allowance period is not sufficient to pay for an authorized capital expense incurred in that period, the unpaid balance may be paid out of the member's constituency allowance for the next allowance period."*

Concerning capital carry-over the Manual states:

> *"Members can claim a capital expense over two fiscal years. This means that the portion of the expense not reimbursed to you in the fiscal year that you purchased the capital item, may be claimed in the next fiscal year subject to capital and allowance maximums in that fiscal year."*

Observations

- We found a number of instances where Members were allowed to carry over a portion of a capital expense made in a year to the following year because they had reached their maximum Constituency allowance in that

first year. However, the Members were fully reimbursed for the capital asset purchased in the initial year.

- Over the period of our audit, 25 Members were allowed to carry-over capital expenses in this manner, amounting to $30,810.

Conclusion

- A number of transactions concerning the carry-over of capital expenses were not in compliance with Section 15(2) of the Regulation. In these instances, Members were allowed to exceed their constituency allowance maximums in the year of the capital asset purchase.

Item to be Addressed

- That the provisions of the Regulation be followed with regard to carry-over of capital expenses.

Communication Charges

Section 12(1) of the Regulation states:

> *"The following types of expenses are authorized expenses for constituency service and office operation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:*
>
> *(d) telephone services, including*
>
> *(i) installing a telephone,*
>
> *(ii) renting a telephone,*
>
> *(iii) extra directory listings,*
>
> *(iv) telephone answering service,*
>
> *(v) Zenith telephone service, whether installed in the member's constituency office or residence,*
>
> *(vi) long distance calls, and*
>
> *(vii) mobile communication services, including all charges for voice, text, data and email services and related access fees;...*
>
> *(d.1) the cost of purchasing a cell-phone or other mobile communication device, a personal digital assistant or other handheld computing device, and any related warranty; ...*
>
> *(h) communication by internet or other electronic means, including the expense of establishing and maintaining a home page and any expenses relating to communicating with other persons using the internet"; ...*

Observations

- Some Members claim expenses for a cell phone/Blackberry and a car phone, others for their home phone and/or home internet expenses, or for several phones. We did not find any reference in the Regulation or Manual which provided guidance on whether home phone or home internet charges were an allowable expense, nor any limits on the number of phones permitted.
- We noted that many Members only provided the summary pages of their office and cell phone bills as support for their claims. Therefore, the details of the long distance and/or roaming charges were not available for review.
- Some Members have arranged to have their cell phone/Blackberry bills paid direct by the MAO. In these instances, the entire invoice is received by the MAO and the payment is processed and charged to the Member's Allowance. However, only the summary page of the invoice is retained with the claim and the detailed pages outlining the long distance and other charges are forwarded to the Member.
- Several Members incurred significant cell phone charges over the period of our audit ranging from $200 to over $1,000 per month. As discussed above, many of these charges were not adequately supported since only the summary page of the invoice was attached to the claim.
- Blackberries are administered directly by the MAO. The MAO arranges for the purchase of the Blackberry plan for the Members. Other communication devices are normally arranged directly by the Members.

Conclusions

- Claims for communication charges were not always supported with complete documentation and in these instances it was not possible to determine whether the expenditure claimed was appropriate. Members enter into other phone plans individually and the MAO has not been expected to review the cost effectiveness of the individual plans.
- Expenses for home phone and internet are not identified as an allowable expense in the Regulation.
- The Regulation does not specify the number of communication devices permitted.

Items to be Addressed

- That the entire invoice for communication charges be attached to all claims. All claims for communication charges should be supported with complete documentation for transparency and audit purposes.

- That the Regulation be amended to specify the nature and number of allowable communication devices.
- That the MAO conduct an analysis of the plans used by Members to determine if more cost effective plans are available.

5.1.3 Representation (2007 - $329,679, 2008 - $339,783)

The main expenses included under the Representation category include donations (cash and product), event tickets, scholarships and bursaries, hospitality, meals with constituents, flowers, caucus meals, flags and pins. As indicated previously, the annual maximum limit for Representation expenses is 15% of the Members' Constituency Allowance entitlement.

The Review Commission on Constituency Allowances and Related Matters (referred to as the Green Commission) appointed in Newfoundland and Labrador in July 2006, examined expenditures such as those included in Representation in Manitoba. The Commissioner's report, released in May 2007, was critical of the practice of Members of the House of Assembly (MHA) spending money on hospitality and donations and gifts to individuals in the constituency. He argues that, *"In Chapter 10, I argue that the spending of public money in such ways is no longer appropriate and that the role of an MHA should not include, and should not be expected by the public to include, such matters".*

Many of our observations which follow related to non-compliance with the existing Regulation or identified areas where the Regulation was unclear. While we have included Items to be Addressed which assume that the existing Regulation remains in place, each of the categories included in "Representation" should be reviewed and amended to reflect contemporary best practice.

Donations to Charitable and Non-Profit Organizations

Section 14 of the Regulation states the following concerning donations:

> *"The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:...*
>
> *(d) the expense of a charitable donation or a donation to a non-profit organization, other than a political party, if*
>
> *(i) the official receipt for the donation is delivered when the expense is claimed, and*
>
> *(ii) in the case of a charity registered under The Income Tax Act (Canada), no person claims a tax credit or deduction for the donation"...*

Observations

- For the two year period of our audit, Members claimed donations to charitable organizations totalling $50,830, of which $42,753 (84%) were not supported by a receipt as required under the Regulation. These exceptions involved 56 different Members.
- Also during this period, Members claimed donations to non-profit organizations totalling $134,189, of which $110,489 (82%) were not supported by a receipt as required under the Regulation. These exceptions involved 61 different Members.
- The supporting documentation provided for these donations usually only included a photocopy of the face of a pre-issued cheque, a request letter for a donation and/or a receipt prepared by the Member and signed by a third party. In a number of instances Members included a signed Statutory Declaration form as support for the donation.

Conclusion

- In most instances, Member claims for donations to charitable and non-profit organizations were not in compliance with the Regulation. In addition, many of the Member claims for donations did not have adequate support for proof of payment.

Item to be Addressed

- That the provisions of the Regulation concerning donations be complied with.

Other Donations/Gifts

In addition to donations made to charitable and non-profit organizations, there were a number of other types of donations and gifts made by Members including:

- Donations of food, refreshments, and product such as television sets, barbeques, books and iPods to groups for fundraising activities, community events, and hospitality;
- Donations to schools, parent associations (other than scholarships and bursaries);
- Flowers;
- Donations to individuals and teams to attend sporting events, youth parliament, dance competitions;
- Gift certificates; and
- Raffle and lottery tickets.

Section 14(e) of the Regulation states that a Member can claim the expense of a raffle ticket if the ticket is delivered when the expense is claimed and that any prize won by the Member is donated to a registered charity.

Figure 4 summarizes the amount of other donations and gifts, by type, claimed by Members over the two year period of our audit. The table also summarizes the extent of unsupported amounts and the percent of unsupported amounts compared to the total amount by type.

Figure 4

Donations and Gifts by Type

Type	Amount	Unsupported Amount	%
Donations of food, refreshments and product	$ 97,002	$77,294	80%
Donations to schools and parent associations	25,294	22,044	87%
Flowers	14,310	8,583	60%
Donations to individuals and teams	11,208	9,899	88%
Gift certificates	10,123	9,825	97%
Raffle and lottery tickets	645	560	87%
Total	$158,582	$128,205	81%

Source: Members' Allowances Office claim files

Observations

- The Regulation does not define donations beyond payments to registered charities and not-for-profit organizations. As a result, the Regulation does not specifically address the documentation required to support claims for the donation of products.
- For the two year period of our audit, Members claimed donations of food, refreshments and products to groups totalling $97,002, of which $77,294 (80%) were not adequately supported. In most of these instances claims were supported by a sales receipt/invoice, however, the recipient was not documented and/or there was no receipt or acknowledgement from the recipient to confirm that the donation was received. Without a receipt or other documentation from the recipient confirming the donation, even if a recipient is documented, there is no way to determine if the items were provided to the documented recipient.
- For the two year period of our audit, Members claimed donations to schools and parent associations totalling $25,294, of which $22,044 (87%) were not supported by a receipt as required under Section 14(d) of the Regulation.

Section 14(e) of the Regulation states that a Member can claim the expense of a raffle ticket if the ticket is delivered when the expense is claimed and that any prize won by the Member is donated to a registered charity.

Figure 4 summarizes the amount of other donations and gifts, by type, claimed by Members over the two year period of our audit. The table also summarizes the extent of unsupported amounts and the percent of unsupported amounts compared to the total amount by type.

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Raffle and lottery tickets	645	560	87%
Total	$158,582	$128,205	81%

Source: Members' Allowances Office claim files.

Observations

- The Regulation does not define donations beyond payments to registered charities and not-for-profit organizations. As a result, the Regulation does not specifically address the documentation required to support claims for the donation of products.
- For the two year period of our audit, Members claimed donations of food, refreshments and products to groups totalling $97,002, of which $77,294 (80%) were not adequately supported. In most of these instances claims were supported by a sales receipt/invoice, however, the recipient was not documented and/or there was no receipt or acknowledgement from the recipient to confirm that the donation was received. Without a receipt or other documentation from the recipient confirming the donation, even if a recipient is documented, there is no way to determine if the items were provided to the documented recipient.
- For the two year period of our audit, Members claimed donations to schools and parent associations totalling $25,294, of which $22,044 (87%) were not supported by a receipt as required under Section 14(d) of the Regulation.

- Flowers purchased by Members for constituents were considered to have adequate support if there was an original sales receipt/invoice and the name of the constituent was clearly documented. Flower claims amounted to $14,310, of which $8,583 (60%) were not adequately supported. In most of these instances the recipient was not documented.
- We considered adequate support for donations to individuals and teams to be an original receipt from the recipient group or at least a formal acknowledgement from the recipient confirming the donation. These donations amounted to $11,208, of which $9,899 (88%) were not adequately supported. The supporting documentation provided for these donations usually only included a photocopy of the face of a pre-issued cheque, and/or a request letter for a donation, and/or a letter to a recipient confirming that a donation had been sent.
- During the period of our audit, Members claimed gift certificate purchases totalling $10,123, of which $9,825 (97%) did not have adequate support. Recipients of the gift certificates, and the purpose for the gift, were not documented in most cases.
- We noted that most of the claims for raffle and lottery tickets were made after the draw date.
- Members claimed for flags, pins, trophies and plaques for distribution to constituents. There were no significant concerns noted from our audit of these amounts.

Conclusions

- The current practice of claiming other donations/gifts is not specifically identified as an authorized expense in the Regulation. Section 10(1) of the Regulation which relates to the annual Constituency Allowance states authorized expenses are for non-partisan access and service to constituents. We do not believe a Member's non-partisan access and service to his or her constituents is enhanced by making donations to organizations or individuals, by giving gift certificates to constituents or through the purchase of raffle or lottery tickets. The use of public funds for these purposes has the potential to be more personal and partisan than providing service to constituents.
- Member claims for other donations/gifts were generally not adequately supported.
- The current provisions of the Regulation do not state that claims for raffle tickets must be made prior to the draw date. This presents an opportunity for Members to retain prizes in the event that they hold a winning ticket.

Items to be Addressed

- Should the Regulation be amended to include other donations/gifts, that Member claims for these expenses be supported with receipts from the recipients.
- Should claims for lottery and raffle tickets be permitted, that they be submitted prior to the draw date.

Scholarships and Bursaries

Section 14(c) of the Regulation states the following concerning scholarships and bursaries:

> *"The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:...*
>
> *(c) the expense of providing a bursary or scholarship, if a receipt for it is delivered when the expense is claimed."*

Observations

- Over the two year period of our audit, we examined Member claims for scholarships and bursaries amounting to $34,337, of which $32,560 (95%) were not supported by a receipt as required under the Regulation. These exceptions involved 25 different Members. The supporting documentation provided for these claims usually only included a photocopy of the face of a pre-issued cheque or a signed Statutory Declaration form. Neither of these documents is adequate support for proof of payment of the scholarship or bursary.
- From our review of the documentation provided by Members for their scholarship and bursary claims, we found that almost 60% of the payments were made to students rather than to the school or school division office. Scholarship and bursary amounts paid initially to the school or school division office are more likely to generate a receipt and provide better assurance of proof of payment.

Conclusion

- In most instances, Member claims for Scholarships and Bursaries were not in compliance with the Regulation and did not have adequate support for proof of payment.

Items to be Addressed

- That the Regulation concerning Scholarships and Bursaries be complied with.
- That payments for Scholarships and Bursaries be made to the school or school division office rather than individual students.

Meals

Section 14(b) of the Regulation states the following concerning meals with constituents:

> *"The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:...*
>
> *(b) the expense of*
>
> *(i) purchasing a meal for two or more persons, or*
>
> *(ii) a bulk purchase of food or non-alcoholic beverages,*
>
> *if the purchase is made to provide hospitality in conjunction with constituency business and the member, when claiming the expense, provides particulars of the number of persons to whom the hospitality was provided and the reasons for providing it"; ...*

Observations

- During the period of our audit we noted 474 instances, amounting to $14,262, where Members did not adequately indicate the purpose of the hospitality, as required by the Regulation. Examples of inadequate documentation of the purpose of the hospitality would be "meeting with constituents", or "business meeting." These exceptions involved 42 different Members.
- We also noted 269 instances, amounting to $12,099, where Members did not provide an original detailed restaurant receipt for the amount claimed. In these instances, claims by Members were generally only supported with a credit card or direct payment slip. These exceptions involved 38 different Members.
- The Regulation states that the number of persons to whom the hospitality was provided should be documented. However, there is no requirement to disclose the names of the persons in attendance.
- A few Members, on occasion, claimed meal expenses for themselves and their staff. There is no specific reference in the Regulation or Manual that Member and staff meal charges are an allowable expense.

Items to be Addressed

- Should the Regulation be amended to include other donations/gifts, that Member claims for these expenses be supported with receipts from the recipients.
- Should claims for lottery and raffle tickets be permitted, that they be submitted prior to the draw date.

Scholarships and Bursaries

Section 14(c) of the Regulation states the following concerning scholarships and bursaries:

> *"The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:...*
>
> *(c) the expense of providing a bursary or scholarship, if a receipt for it is delivered when the expense is claimed."*

Observations

- Over the two year period of our audit, we examined Member claims for scholarships and bursaries amounting to $34,337, of which $32,560 (95%) were not supported by a receipt as required under the Regulation. These exceptions involved 25 different Members. The supporting documentation provided for these claims usually only included a photocopy of the face of a pre-issued cheque or a signed Statutory Declaration form. Neither of these documents is adequate support for proof of payment of the scholarship or bursary.
- From our review of the documentation provided by Members for their scholarship and bursary claims, we found that almost 60% of the payments were made to students rather than to the school or school division office. Scholarship and bursary amounts paid initially to the school or school division office are more likely to generate a receipt and provide better assurance of proof of payment.

Conclusion

- In most instances, Member claims for Scholarships and Bursaries were not in compliance with the Regulation and did not have adequate support for proof of payment.

Items to be Addressed

- That the Regulation concerning Scholarships and Bursaries be complied with.
- That payments for Scholarships and Bursaries be made to the school or school division office rather than individual students.

Meals

Section 14(b) of the Regulation states the following concerning meals with constituents:

> *"The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:...*
>
> *(b) the expense of*
>
> *(i) purchasing a meal for two or more persons, or*
>
> *(ii) a bulk purchase of food or non-alcoholic beverages,*
>
> *if the purchase is made to provide hospitality in conjunction with constituency business and the member, when claiming the expense, provides particulars of the number of persons to whom the hospitality was provided and the reasons for providing it"; ...*

Observations

- During the period of our audit we noted 474 instances, amounting to $14,262, where Members did not adequately indicate the purpose of the hospitality, as required by the Regulation. Examples of inadequate documentation of the purpose of the hospitality would be "meeting with constituents", or "business meeting." These exceptions involved 42 different Members.
- We also noted 269 instances, amounting to $12,099, where Members did not provide an original detailed restaurant receipt for the amount claimed. In these instances, claims by Members were generally only supported with a credit card or direct payment slip. These exceptions involved 38 different Members.
- The Regulation states that the number of persons to whom the hospitality was provided should be documented. However, there is no requirement to disclose the names of the persons in attendance.
- A few Members, on occasion, claimed meal expenses for themselves and their staff. There is no specific reference in the Regulation or Manual that Member and staff meal charges are an allowable expense.

Conclusions

- In many instances, Member claims for meal charges with constituents were not in compliance with the Regulation and were not adequately supported with a detailed restaurant receipt. As a result, it was not always possible to determine whether the expenditure claimed was appropriate.
- The current provisions of the Regulation do not state that the names of the persons in attendance should be documented for hospitality meal claims. For the purpose of accountability and transparency, the names of the recipients of hospitality meals should be identified.
- Expenses for Member and staff meals are not clearly identified as an allowable expense in the Regulation and Manual. Clearly, if those individuals are the only ones in attendance, the claim would not fall under the category of "Meals with Constituents".

Items to be Addressed

- That the names of the persons attending and the purpose of the hospitality be documented and an original detailed restaurant receipt and proof of payment be submitted for reimbursement.
- That charges for Member and staff meals, if allowable, be covered outside of the Members' Allowances intended for constituency work.

Event Tickets

There is no mention of event tickets as an authorized expense in the Manual or the Regulation. However, a quick reference sheet, "Simplified Members' Allowances Reference Tool" for the Constituency Allowance Categories, is provided to Members with the Manual. This reference sheet indicates the nature of authorized expenditures included in each category of expense. Under the Representation category on the reference sheet, raffle tickets and social event tickets are mentioned.

Observations

- For the two year period of our audit, Members made claims in the amount of $59,582 for reimbursement of the cost of event tickets of which $48,564 or 82% were not adequately supported. These findings involved 64 different Members.
- Supporting documentation provided for event ticket claims usually only included an invoice or the event notification and/or a copy of a pre-issued cheque.

Conclusions

- Expenses for event tickets are not specifically identified as an allowable expense in the Regulation and Manual and as such there are no formal guidelines for Members to follow concerning the purchase of additional tickets and who are eligible recipients for these tickets.
- Member claims for reimbursement for event tickets were paid without adequate supporting documentation and/or proof of payment in many instances.

Items to be Addressed

- That the Regulation clearly indicate whether or not event tickets are an allowable expense under Members' Allowances.
- That, if allowed, only those event ticket claims that are supported with a proper receipt be reimbursed to Members.

5.2 Travel Allowance

Members are entitled to reimbursement for authorized travel expenses to the extent that they are incurred by the Member in the performance of his or her duties as a Member. The maximum annual Travel Allowance for Members is set by region. Winnipeg Members are provided a base amount which is subject to an annual cost of living adjustment. Northern and Southern Members are provided a base amount, subject to an annual cost of living adjustment, plus an amount established by a formula which takes into account the location of each constituency. If a Member depletes their Travel Allowance they can claim travel expenses under their Constituency Allowance, subject to funds being available.

Authorized travel expenses include meals, private vehicle mileage, transportation, accommodation and out-of-province travel. There is a maximum allowance determined each year for out-of-province travel which applies to all Members. Members are required to submit all travel expenses on a Travel Allowance claim form.

Figure 5 is a summary of the Travel expenses claimed by category for the two years under review.

Figure 5

Travel Allowance Expenses Claimed		
	For the Year Ended March 31, 2007	For the Year Ended March 31, 2008
Private Vehicle Mileage	$369,017	$362,130
Meals	13,382	17,385
Accommodation and Incidentals	22,610	29,473
Airfare/Car Rental/Taxi and Other	254,423	240,090
Total Travel	$659,432	$649,078

Source: Members' Allowances Office claim files.

Private Vehicle Mileage

Members are reimbursed a set rate per kilometre for the use of their private vehicle. The mileage rate is based on the civil service mileage rates. Once a Member has claimed 25,000 kilometres in a fiscal year the mileage rate is increased by 5 cents per kilometre. On occasion, constituency office staff claim travel related expenses for constituency business. In these instances, a travel claim form is prepared, approved by the Member and the cost of the claim is charged to the Member's Travel Allowance.

The Regulation was silent on the documentation required and the only guidance available to Members was a form in the Manual which would suggest that specific daily mileage details were required.

Observations

- Over the two year period of our audit, Members were reimbursed for private vehicle mileage an amount of $445,751 that was not adequately supported. This involved 35 different Members.
- We noted that a number of Members when claiming private vehicle mileage did not provide details on dates of travel, starting points or destinations. In some instances, only the number of kilometres being claimed for the month was provided by the Member (example "xxxx" km for constituency travel in the month). In these instances, we could not determine the reasonableness of the travel claim.
- We noted instances where private vehicle mileage claims made by constituency office staff did not have adequate and/or appropriate supporting documentation.

Figure 5

Travel Allowance Expenses Claimed		
	For the Year Ended March 31, 2007	For the Year Ended March 31, 2008
Private Vehicle Mileage	$369,017	$362,130
Meals	13,382	17,385
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Airfare/Car Rental/Taxi and Other	254,423	240,090
Total Travel	**$659,432**	**$649,078**

Source: Members' Allowances Office claim files.

Private Vehicle Mileage

Members are reimbursed a set rate per kilometre for the use of their private vehicle. The mileage rate is based on the civil service mileage rates. Once a Member has claimed 25,000 kilometres in a fiscal year the mileage rate is increased by 5 cents per kilometre. On occasion, constituency office staff claim travel related expenses for constituency business. In these instances, a travel claim form is prepared, approved by the Member and the cost of the claim is charged to the Member's Travel Allowance.

The Regulation was silent on the documentation required and the only guidance available to Members was a form in the Manual which would suggest that specific daily mileage details were required.

Observations

- Over the two year period of our audit, Members were reimbursed for private vehicle mileage an amount of $445,751 that was not adequately supported. This involved 35 different Members.
- We noted that a number of Members when claiming private vehicle mileage did not provide details on dates of travel, starting points or destinations. In some instances, only the number of kilometres being claimed for the month was provided by the Member (example "xxxx" km for constituency travel in the month). In these instances, we could not determine the reasonableness of the travel claim.
- We noted instances where private vehicle mileage claims made by constituency office staff did not have adequate and/or appropriate supporting documentation.

Conclusion

- Considering that the Allowance is based on actual mileage incurred, claims for private vehicle mileage, should have appropriate supporting documentation attached. That was not the case for the majority of claims we examined.

Item to be Addressed

- That all private vehicle mileage claims include the date, starting point, destination and total kilometres travelled.

Meals

Members are reimbursed for individual meals or a meal per diem at civil service rates when travelling.

Observations

- Over the two year period of our audit, Members were reimbursed for meals and per diems an amount of $6,572 that was not adequately supported. These exceptions involved 7 different Members.
- During our audit we noted that Members in claiming meals or per diems did not always provide sufficient details (dates and locations) on the claim form.

Conclusion

- We were unable to determine whether the Member was entitled to claim the expense, in those instances where supporting documentation was not provided.

Item to be Addressed

- That dates and locations be documented for all meals and meal per diems claimed.

Taxi/Parking

Observation

- In most instances Members provided receipts for these claims. However, during our audit we noted that some Members were reimbursed for taxi or parking claims amounting to $5,824 where receipts were not provided.

Conclusion

- We were unable to conclude whether all of these claims were appropriate given the absence of supporting documentation.

Item to be Addressed

- That supporting documentation be provided for all taxi/parking claims.

Travel Outside of the Member's Constituency

Observation

- Over the two year period of our audit, Members were reimbursed for travel expenses totalling $110,039 which were not adequately supported as the purpose for the travel was not documented. This involved 46 different Members.

Conclusion

- We were unable to conclude whether all of these claims were appropriate given the absence of supporting documentation.

Item to be Addressed

- That all expenses claimed for travel outside of the Member's constituency include the purpose for the travel.

Airfare Claims

Observation

- During our audit we noted instances where duplicate payments were made related to airfare claims. Duplicate payments arose when an itinerary was accepted as proof the flight was taken and paid for by the Member.

Conclusion

- Using the itinerary as the receipt is inadequate. Changes may have been made to the itinerary or the flight may have been cancelled and the cost credited to the Member. Boarding passes would provide proof that a flight was taken.

Item to be Addressed

- That all claims for airfare be supported with a boarding pass.

5.3 Living Allowance

Non-Winnipeg Members are entitled to reimbursement of allowable temporary residence and living expenses if they meet certain conditions. For example, a Member would be eligible for this allowance if the Member's principal residence is outside a 50 kilometre radius of the Legislative Building, and the Member has a temporary or second owned residence in Winnipeg.

5.3.1 Temporary Residence Expenses (2007 - $250,193, 2008 - $250,984)

The monthly maximum entitlement for Temporary Residence expenses is determined using a base amount which is subject to an annual cost of living adjustment. For the year ended March 31, 2008 the maximum amount for Temporary Residence expenses was $1,078 per month ($1,051 per month for the year ended March 31, 2007).

Authorized expenses under this category include costs related either to rental accommodation (such as rent, parking, utilities, furniture rental) or costs related to a second-owned residence (such as property taxes, mortgage interest, insurance and utilities).

All of the expenditures for temporary residences complied with the Regulation except for an expense totalling $824 which has since been corrected.

5.3.2 Living Expenses (2007 - $152,490, 2008 - $140,316)

The monthly maximum entitlement for Living expenses is determined using a base amount which is subject to an annual cost of living adjustment. For the year ended March 31, 2008, the maximum monthly entitlement was $648. For the year ended March 31, 2007 the maximum monthly entitlement was $635. This entitlement is in effect for each month that the Legislative Assembly is in session, plus any month in which special or standing committees meet and for two additional months of the Member's choice. For the remaining intersessional months there is a reduced maximum amount. The Speaker, members of the Executive Council, Leader of the Official Opposition or Leader of a recognized opposition party are eligible to receive up to the maximum entitlement for Living expenses each month whether the Legislative Assembly is in session or not in session.

Authorized expenses under this category include meals at civil service rates or to any amount with receipts, and dry cleaning and laundry charges.

Observations

- Members eligible for living expenses usually claim the maximum monthly entitlement as a meal per diem.
- In the instructions on the back of the Living Allowance claim form, Members are required to provide the date when an expense was incurred. However, most Members are not providing this information. For example, a Member would only enter "April Per Diems" and the maximum living allowance entitlement.
- Members have not been entering the dates for which they are claiming a per diem under living expenses and for claims made under other Allowances such as Travel. Due to this lack of documentation, we were unable to determine whether meal claims were appropriate in many instances.
- Members are eligible to be reimbursed for meals under the Representation category for hospitality and meals with constituents, Caucus meals, and the attendance at events where meals are often included. Members are also eligible for reimbursement of meals under the Travel Allowance. There are no restrictions to prevent Members from claiming specific reimbursement for meals while at the same time claiming the monthly per diem. Neither the Regulation nor the Manual specify the number of meals the per diem should cover per month, however, at the civil service rate of $31.40, this would be equivalent to approximately 21 full day meal per diems each month ($648/$31.40). On this basis the per diem combined with other claims could result in Members claiming more full-day meal allowances than days in the month. We found examples of this occurring.

Conclusions

- By not documenting the actual dates for meals claimed on the Living Allowance claim form, Members were not following the instructions as provided on the claim form.
- Due to the lack of supporting documentation, we were unable to determine if the daily meal per diems claimed under Living Expenses were appropriate in all instances. The absence of guidance permitted Members to claim both the per diem and specifically reimbursed meals during the same period.

Items to be Addressed

- That the date be documented for all meal per diems claimed under the Living Allowance and for meals claimed under other Allowances.
- That the Regulation be amended to prevent duplicate claims for meals.

5.4 Printing Allowance

(2007- $236,200, 2008 - $238,950)

Under *The Legislative Assembly Act*, all Members are entitled to an allowance for three printings and mailings of householder mailings to their constituents each year. A householder mailing is an unaddressed mailing such as a constituency newsletter or calendar printed for distribution to each household in a constituency. The total of the allowance for each Member is based on the size of his or her constituency. These expenses are tracked by the MAO.

To claim each printing expense, a Member must submit a Printing Allowance claim form with an original receipt or original invoice. A copy of the printed material is not required to be attached to the claim. The Manual provides restrictions in that the householder mailings are not to be used to solicit donations or votes, to promote membership in a political party, or to promote attendance at political party functions.

The Printing Allowance is not an Allowance provided for in the Regulation, however if a Member exceeds their Printing Allowance entitlement, they may be able to claim the excess under their Constituency Allowance. If claiming under their Constituency Allowance, a copy of the printed material is required to be attached to the claim.

We examined the Printing Allowance for the two-year period of our audit. For 2007, the total expenditures were $236,200 and for 2008, $238,950.

Observations

- Although a copy of the printed material was not required to be attached to the Printing Allowance claims, for those claims that nevertheless had a copy attached, we did not find any exceptions to the Manual's restrictions. However, as not all of the claims included a copy of the printed material, we were unable to determine if all the printed material was appropriate.
- We found that a Member had claimed excess printing costs under their Constituency Allowance in both 2007 and 2008 which could be considered non-arm's length. The Regulation does not permit such a non-arm's length expense for Constituency Allowances, however there is no such restriction for claims under the Printing Allowances.

Conclusions

- Claiming an expenditure that is of a non-arm's length nature from public funds is not permitted.

- Since the current practice for the Printing Allowance does not require printed materials to be attached to all claims, we were unable to conclude as to the appropriateness of all printing claims.

Items to be Addressed

- That all claims under the Printing Allowance include a copy of printed materials to help prevent inappropriate expenditures from being processed under this category.
- That the Regulation be amended to clearly define allowable printing costs being reimbursed from public funds.

5.5 Commuter Allowance

(2007- $2,459, 2008 - $3,438)

Non-Winnipeg Members are entitled to reimbursement for authorized commuting expenses if the Member represents a constituency outside of Winnipeg and the Member's principal residence is outside of Winnipeg. A Member cannot claim Commuting expenses and Living Allowance expenses in the same month.

Authorized commuting expenses include mileage, accommodation and meals. Members are allowed to claim a maximum of 6 round trips per week when the Legislative Assembly is in session and 2 round trips per week when the Legislative Assembly is not in session. Members are also allowed to claim contingency stay expenses, including accommodation and 2 meals per stay, up to a maximum of 20 overnight stays during each sessional period. Mileage and meal expenses are paid at the current civil service rates.

There were no exceptions noted during our audit that were specific to Commuter Allowance expenses.

5.6 Committee Allowance

(2007 - $1,168, 2008 - $615)

Members who are on a Standing Committee, Special Committee or the LAMC, are entitled to reimbursement of authorized expenses related to attending Committee meetings when held during an intersessional period. Authorized committee expenses include transportation, accommodation, mileage and meals. Amounts for mileage and meal expenses are at the current civil service rates.

There were no exceptions noted during our audit that were specific to Committee Allowance expenses.

6.0 Recommendations

6.1 Overall Recommendations

The findings in our report indicate that the system supporting the Members' Allowance and Printing claims requires improvement. There is a need to update the rules, to clarify the documentation required to support the claims and to strengthen the monitoring practices.

Both the Commissioner and the MAO can play an important role in strengthening the system. Both bring an independent perspective, and can provide Members and the public with assurance that appropriate rules are first established and then adhered to. There is also an opportunity to strengthen the independence of the MAO by increasing the involvement of the Clerk of the Legislative Assembly.

With regards to the role of the Commissioner, we saw a need for this individual to be provided with additional information when reviewing the Regulations. He or she should be provided with an appropriate level of detail to enable him or her to understand whether or not the current system is operating as intended. This would include information as to whether or not Members are complying with the Regulations.

> **We recommend that as input to the Commissioner's work in reviewing the Members' Allowances that a compliance audit be conducted.**

A compliance audit would also provide the Members and the public, assurance that the Regulations in place are being followed.

With regards to the role of the MAO, we noted during the course of our audit that the Executive Director of MAO is accountable to the Speaker with regards to the administration and monitoring of the Members' Allowances and Printing claims. It is common in other jurisdictions in Canada for the MAO to report to the Clerk of the Legislative Assembly (the Clerk). The Clerk is an independent officer of the Assembly with a long-standing history of providing support to elected officials in all Parliamentary democracies. In Manitoba, the Clerk's responsibilities include that of being the Secretary to the LAMC however the Clerk has no responsibility for the operations of the MAO. A conflict arises with the MAO reporting to the same group which it is monitoring.

> **We recommend that the MAO report to the Clerk of the Legislative Assembly.**

Another area where the MAO plays an important role is in providing training and orientation to the Members. The MAO can contribute to a strong system

by ensuring that all future training and orientation sessions reflect a culture of compliance, and that both the rules and the supporting documentation required by Members are clearly explained. In their monitoring role, the MAO need to decline any requests not meeting the rules or the documentation requirements.

Our findings included a number of items to be addressed in updating the rules around Members' Allowances and Printing claims. We noted instances where the Regulation and the Manual were not aligned. We also noted instances where the rules were not sufficiently clear, requiring interpretation from LAMC and a supporting manual to provide additional guidance. We also identified opportunities to strengthen practices around accountability and transparency to the public. Our report includes a list of "items to be addressed" which should be taken into account in modernizing the existing regulations.

We recommend that the rules for Members' Allowances and Printing claims be amended to clarify the documentation requirements, to strengthen public accountability and to reflect best practice. The amended rules should address the items listed in Section 6.2 of this report.

6.2 Summary of Items to be Addressed

Transparency and Accountability

- That the Regulations and detailed information about Members' Allowances be available to the public on the Government of Manitoba website.
- That the Manual and LAMC deliberations be a matter of public record.

Adequacy of Supporting Documentation/Proof of Payment

- That Members be reimbursed only for those claims that are supported with original documentation including proof of payment and that have the intended purpose of the expense documented.
- That Members provide the MAO with constituency bank statements and cheque information on a monthly basis.
- That the use of Statutory Declaration forms be eliminated.

Year End Cut-off of Member Claims

- That a cut-off date be established for the submission of Member claims for each fiscal year.

Constituency Allowance

Capital Assets

- That the Regulation be complied with in that all capital assets are the property of the Legislative Assembly.
- That the MAO capital asset inventory records include the location of the asset and the person who has been assigned the asset. For control purposes, MAO should conduct unannounced periodic inventory counts on these assets.

Capital Carry-Over

- That the provisions of the Regulation be followed with regard to carry-over of capital expenses.

Communication Charges

- That the entire invoice for communication charges be attached to all claims. All claims for communication charges should be supported with complete documentation for transparency and audit purposes.
- That the Regulation be amended to specify the nature and number of allowable communication devices.
- That the MAO conduct an analysis of the plans used by Members to determine if more cost effective plans are available.

Representation

While we have included Items to be Addressed which assume that the existing Regulation remains in place, each of the categories included in "Representation" should be reviewed and amended to reflect contemporary best practice.

Donations to Charitable and Non-Profit Organizations

- That the provisions of the Regulation concerning donations be complied with.

Other Donations/Gifts

- Should the Regulation be amended to include other donations/gifts, that Member claims for these expenses be supported with receipts from the recipients.
- Should claims for lottery and raffle tickets be permitted, that they be submitted prior to the draw date.

Scholarships and Bursaries

- That the Regulation concerning Scholarships and Bursaries be complied with.
- That payments for Scholarships and Bursaries be made to the school or school division office rather than individual students.

Meals

- That the names of the persons attending and the purpose of the hospitality be documented and an original detailed restaurant receipt and proof of payment be documented and submitted for reimbursement.
- That charges for Member and staff meals, if allowable, be covered outside of the Members' Allowances intended for constituency work.

Event Tickets

- That the Regulation clearly indicate whether or not event tickets are an allowable expense under Members' Allowances.
- That, if allowed, only those event ticket claims that are supported with a proper receipt be reimbursed to Members.

Travel Allowance

Private Vehicle Mileage

- That all private vehicle mileage claims include the date, starting point, destination and total kilometres travelled.

Meals

- That dates and locations be documented for all meals and meal per diems claimed.

Taxi/Parking

- That supporting documentation be provided for all taxi/parking claims.

Travel Outside of the Member's Constituency

- That all expenses claimed for travel outside of the Member's constituency include the purpose for the travel.

Airfare Claims

- That all claims for airfare be supported with a boarding pass.

Living Allowance

- That the date be documented for all meal per diems claimed under the Living Allowance and for meals claimed under other Allowances.

- That the Regulation be amended to prevent duplicate claims for meals.

Printing Allowance

- That all claims under the Printing Allowance include a copy of printed materials to help prevent inappropriate expenditures from being processed under this category.
- That the Regulation be amended to clearly define allowable printing costs being reimbursed from public funds.

7.0 Comments of Manitoba Legislative Assembly

The Manitoba Legislative Assembly would like to thank the Auditor for the report on MLA Allowances. The Assembly is committed to implementing all of the Auditor General's recommendations.

Like legislatures around the world, the Manitoba Legislative Assembly has been working toward modernizing its processes for many years. Most recently, *The Legislative Assembly Act* was amended in 2004 to make the system more independent by removing the requirement for the Assembly to vote on the recommendations of the Independent MLA Pay and Benefits Commissioner. The decisions of the Independent MLA Pay and Allowances Commissioner are now binding.

With the implementation of the Auditor's recommendations, we believe that the Manitoba Legislative Assembly can become the most transparent and accountable legislature in Canada.

Any use of public money should have a monitoring system that is always striving to be without flaw and this report found that the system in Manitoba was not perfect. While Members of Manitoba's Legislative Assembly are prudent, having under-spent their constituency budgets by over $766,000 during the audit period, the report found that more stringent tracking and monitoring of expenses is required. Measures are being implemented to ensure that Manitoba's Legislative Assembly has tighter regulations with greater transparency and accountability.

Upon receipt of the draft recommendations from the Auditor, the Assembly referred the draft recommendations to the most recent Independent MLA Pay and Allowances Commissioner, Michael Werier, for guidance and advice on actions that could be taken immediately. Following Werier's guidance and advice, the Manitoba Legislative Assembly has already implemented 24 of 34 recommendations. The remaining 10 recommendations require legislation for implementation.

Legislation will be introduced to implement these recommendations at the earliest opportunity. This legislation will appoint an interim Independent MLA Pay and Allowances Commissioner to address the recommendations in the Regulation(s). Currently, *The Legislative Assembly Act* only allows for the appointment of an Independent MLA Pay and Allowances Commissioner after each General Election.

Manitoba is one of only two provinces to make detailed information about Members' expenses available to the public, including receipts. Legislation will be introduced to further enhance transparency and accountability by requiring quarterly online posting of Members' expenses.

Appendices

The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1

THE LEGISLATIVE ASSEMBLY ACT
(C.C.S.M. c. L110)

Members' Allowances Regulation

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This right column provides an explanation of the left column on each page.

Appendix 1 (cont'd)

The Legislative Assembly Act
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All persons making use of this consolidation are reminded that it has no legislative sanction. This consolidates the amendments made on October 15, 2004 (Manitoba Gazette - Part 1 - October 30, 2004), on November 15, 2005 (Manitoba Gazette - Part 1 - December 3, 2005) and on January 14, 2008 (Manitoba Gazette – Part 1 – January 26, 2008).

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The Legislative Assembly Act
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PART 1

GENERAL PROVISIONS

Types of allowances

1 This regulation provides for the following allowances to be paid to or for the benefit of members to pay for authorized expenses as set out in this regulation:

(a) a constituency allowance, as set out in Part 2, to pay expenses for access and service to constituents;

(a.1) a constituency assistants allowance, as set out in Part 2, to pay for salaries and benefits of constituency assistants;

(b) a capital allowance to pay expenses for initial office setup for new members, as set out in Part 2;

(c) a travel allowance to pay travel expenses, as set out in Part 3;

(d) a commuter allowance, as set out in Part 4, to pay additional travel expenses for members having to commute to Winnipeg;

(e) a living allowance, as set out in Part 4, to pay expenses relating to

(i) a temporary residence, or

(ii) for those without a temporary residence, a limited number of overnight stays in Winnipeg;

(f) an intersessional committee allowance, as set out in Part 5, to pay expenses for attending committees when the Legislative Assembly is not sitting.

M.R. Jan. 14/08

This regulations covers the following allowances:

- constituency allowance
- constituency assistants allowance
- capital allowance for new members
- travel allowance
- commuter allowance
- living allowance
- committee allowance

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The Members' Allowances Regulation

Appendix 1 (cont'd.)

DEFINITIONS AND INTERPRETATION

Definitions

2(1) The following definitions apply in this regulation.

"Act" means *The Legislative Assembly Act*. (« *Loi* »)

"allowance period" means the period from April 1 of one year to March 31 of the next year. (« période d'allocation »)

Members' allowances are calculated, provided and claimed on a fiscal year basis which is April 1 to March 31 each year.

"annual allowance", in relation to any type of allowance for an allowance period, means the maximum amount payable to a member in that allowance period as an allowance of that type. (« allocation annuelle »)

Members' allowances are provided for a 12 month period from April 1 to March 31. The annual allowance is prorated over 365 days for a new member.

"authorized expense" means an expense authorized to be paid out of an allowance under this regulation. (« frais autorisés »)

Members' allowances are non-taxable, accountable allowances that are paid only on the basis of a member claiming reimbursement of authorized expenses.

"commercial accommodation" means accommodation for an overnight stay provided by a hotel, motel or other similar establishment for a fee. (« logement commercial »)

An overnight stay at a hotel/motel. This might also include a paid stay at a rooming house, mine/logging camp, etc. Anywhere that rents rooms commercially.

"common-law partner" of a person means an individual who, not being married to the person, is cohabiting with him or her in a conjugal relationship of some permanence. (« conjoint de fait »)

This definition is used in connection with non-arm's length expenses. Expenses are non-arm's length if a member's common-law partner or a relative of the common-law partner or another member's common-law partner or child of that common-law partner receives a benefit from any of the member's allowances including staff salaries.

"election period" means

(a) in the case of a federal or provincial election, the period beginning on the day the writ for the election is issued and ending on the day before the day of general polling of the election, and

(b) in the case of an election for a school board or for the council of a municipality or local government district, the period beginning on the day that nominations of candidates may first be filed and ending on the day before the day of general polling of the election. (« période électorale »)

(a) and (b)
Any federal, provincial, municipal, local government, or school board election.

This definition is used in connection with constituency offices and temporary residences. This regulation makes these premises ineligible for payment of expenses if used in connection with any election.

Appendix 1 (cont'd.) The Legislative Assembly Act
The Members' Allowances Regulation

"kilometric rate" in relation to transportation by private vehicle means

(a) in the case of travel by a southern or Winnipeg member, the single trip rate per kilometre payable to civil servants for travel by private vehicle south of the 53rd parallel; or

All members except the 4 northern members are reimbursed for travel by private vehicle at the civil service mileage rate that applies to travel in southern Manitoba.

(b) in the case of travel by a northern member, the single trip rate per kilometre payable to civil servants for travel by private vehicle north of the 53rd parallel;

The 4 northern members (Flin Flon, Rupertsland, The Pas and Thompson) are reimbursed for travel by private vehicle at the civil service mileage rate that applies to travel in northern Manitoba.

plus, when the member has authorized expenses for travel by private vehicle for more than 25,000 kilometres in an allowance period, an additional $0.05 per kilometre for each additional kilometre travelled by private vehicle in that period. (« taux par kilomètre »)

If a member claims over 25,000 kilometres in a fiscal year, the kilometres over 25,000 will be reimbursed at the member's mileage rate plus an additional 5 cents per kilometre. This applies to reimbursement under the member's travel allowance and the member's constituency allowance after the travel allowance is depleted.

"relative" of a member means

(a) a child, grandchild, brother, sister, parent or grandparent of the member or of the member's spouse or common-law partner; and

(b) the spouse or common-law partner of a child, grandchild, brother, sister, parent or grandparent of the member or of the member's spouse or common-law partner. (« parent »)

This definition is used in connection with non-arm's length expenses. Expenses are non-arm's length if a member's relative has a financial interest in the expense. This definition of "relative" is an extremely broad definition. It includes not only direct relatives but their spouses or common-law partners as well.

"new member" means a member who was not a member immediately before he or she was last elected. (« nouveau député »)

A person who was not a member immediately before his or her election.

"non-arm's length expense" means an expense incurred by or on behalf of a member under a contract or other arrangement, if

(a) any of the following persons has a direct financial interest in the contract or other arrangement:

Non-arm's length expenses are not eligible for reimbursement. An expense is non-arm's length if any of the following persons receives a benefit from the transaction to be reimbursed:

(i) the member or his or her spouse or common-law partner, or a corporation in which any of them has a direct financial interest,

i) the **member** or **member's spouse or common-law partner** or a corporation in which any of them has a direct financial interest,

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The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd)

(ii) a relative of the member, or a corporation in which a relative of the member has a direct financial interest,

(iii) another member or his or her child, spouse or common-law partner, a child of another member's spouse or common-law partner, or a corporation in which any of them has a direct financial interest; and

(b) in any case referred to in subclause (a)(ii) or (iii), the member who incurred the expense, or on whose behalf it was incurred, knew or ought reasonably to have known that the interest existed. (« frais engagés avec lien de dépendance »)

"non-commercial accommodation" means accommodation for an overnight stay provided without charge. (« logement non commercial »)

Interpretation of "direct financial interest"

2(2) A person who is a beneficial owner of a thing is deemed to have a direct financial interest in the thing.

ii) a **relative of the member** or a **relative of the member's spouse or common-law partner** or a corporation in which any of them has a direct financial interest,

Relative of the member and relative of the member's spouse or common-law partner is:
- child or child's spouse or common-law partner
- grandchild and grandchild's spouse or common-law partner
- brother and brother's spouse or common-law partner
- sister and sister's spouse or common-law partner
- parent and parent's spouse or common-law partner
- grandparent and grandparent's spouse or common-law partner

iii) another member or another member's spouse or common-law partner or a child of any of them.

Note: ii) and iii) apply if the member knows or ought reasonably to know of the financial interest.

Accommodation provided at no charge, eg. home of mayor, reeve, etc.

If a person receives a benefit from ownership of a business, property, investment or other thing, then that person has a direct financial interest. This definition is used in connection with non-arm's length expenses.

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Appendix 1 (cont'd.) The Legislative Assembly Act
The Members' Allowances Regulation

Northern, southern and Winnipeg Regions

3 In this regulation, members and their constituencies are categorized by region and electoral division as follows:

Northern	Southern	Winnipeg
Flin Flon	Arthur-Virden	Assiniboia
Rupertsland	Brandon East	Burrows
The Pas	Brandon West	Charleswood
Thompson	Carman	Concordia
	Dauphin-Roblin	Elmwood
	Emerson	Fort Garry
	Gimli	Fort Rouge
	Interlake	Fort Whyte
	Lac du Bonnet	Inkster
	Lakeside	Kildonan
	La Verendrye	Kirkfield Park
	Minnedosa	Lord Roberts
	Morris	Minto
	Pembina	Point Douglas
	Portage la Prairie	Radisson
	Russell	Riel
	Selkirk	River East
	Springfield	River Heights
	Ste. Rose	Rossmere
	Steinbach	Seine River
	Swan River	Southdale
	Turtle Mountain	St. Boniface
		St. James
		St. Johns
		St. Norbert
		St. Vital
		The Maples
		Transcona
		Tuxedo

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The annual amount of a member's travel allowance and the annual amount of a member's constituency allowance is determined by the region in which that member's constituency is located.

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The Members' Allowances Regulation

Wellington	
Wolseley	

Appendix 1 (cont'd.) The Legislative Assembly Act
The Members' Allowances Regulation

PAYMENT OF EXPENSES

Direct payment to third parties

4(1) The following expenses, to the extent they are authorized expenses, are to be paid by the Legislative Assembly directly to the person to whom they are due rather than to the member who incurs them:

(a) rent for constituency office space;

a) Constituency office rent **must be paid directly** by the Members' Allowances Office;

(b) remuneration for constituency staff.

b) Constituency staff salaries **must be paid directly** by Human Resource Services.

Direct payments of invoiced amounts

4(2) At the request of a member, the Speaker may pay an authorized expense that exceeds $200. directly to a third party, if the request is accompanied by

A member may ask Members' Allowances Office to pay an expense over **$100.00** (LAMC decision) directly to the third party. The member must provide a claim with suitable proof (invoice, contract, other document, or statutory declaration) that the expense has been incurred.

(a) an invoice, contract or other document evidencing the obligation; or

(b) a statutory declaration of the member verifying that the authorized expense was incurred and explaining the absence of a document evidencing the obligation.

Claim for reimbursement

5 A claim for payment of an authorized expense

To claim an expense, a member must complete and sign a claim form and attach either

(a) must be made in a form approved by the Speaker; and

a) a receipt for the expense; or

(b) unless it is payable at a civil service rate, must be accompanied by

b) a statutory declaration verifying the expense and explaining why there is no receipt.

(i) a receipt, or

A member may (per LAMC) also write on an invoice "Certified paid on (date of payment)" and sign his or her name.

(ii) a statutory declaration of the member or a person with personal knowledge of the claim verifying that the expenditure was incurred and explaining the absence of a receipt.

Prepayment of expense

6(1) A member may claim, and the Speaker may prepay, an authorized expense that is chargeable to the member's allowance for a future month, if that type of expense is prepaid in the normal course of

Expenses normally prepaid (eg. rent, insurance, subscriptions) may be claimed at the time payment is due.

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The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd.)

business.

Repayment of prepaid expense
6(2) If a member's prepaid expense later turns out not to be an authorized expense in the month against which it was charged, the amount so prepaid is a debt due by the member to the Crown.

If for any reason (eg. ceasing to be a member) the prepaid expense becomes an ineligible expense, any balance of the expense becomes a debt to the Province.

Expenses paid from other sources
7 Despite any provision of this regulation, a member's expense is not an authorized expense if the member is, or is entitled to be, reimbursed for it under any contract or arrangement other than this regulation.

Any expense for which a member has been reimbursed from any other source is not a claimable expense.

Allowances payable to former members
8(1) An allowance payable in respect of authorized expenses incurred by a member before he or she ceases to be a member is payable to the former member or to his or her estate.

A former member (or his or her estate) can claim expenses that happened prior to his or her ceasing to be a member.

Certain allowances continue after ceasing to be a member
8(2) In addition, the constituency allowance and the living allowance are payable to a former member, or to his or her estate, to pay for the following expenses incurred before the end of the second month after the month in which he or she ceased to be a member:

Members who cease to be members can continue to claim on-going expenses related to renting a constituency office and a temporary residence for two months following the month in which they cease to be members. In an election period, that is two months following the month in which election day occurs. Otherwise that is two months following the month in which the member resigns, dies or is disqualified.

(a) if they are payable in connection with the constituency office occupied by the former member while he or she was a member and would, but for his or her having ceased to be a member, qualify for the constituency allowance,

(i) office space expenses,

(ii) rental of office furnishings or equipment,

(iii) telephone rental or telephone answering service fees, and

(iv) insurance regarding the constituency office;

(b) expenses of moving the contents of the constituency office;

The following on-going expenses can be claimed **as long as the constituency office is not being used for any campaign purpose:**

- office rent, on-going office maintenance and janitorial charge
- office equipment and furnishing rental, such as computers, photocopiers and water coolers
- cable television
- office utilities (hydro, gas, water)
- office telephone rental, answering service and internet access. **No** long distance charges may be claimed. **No** expenses related to cellular phones or Blackberries may be claimed.
- on-going maintenance of office website. **No** design or development expenses may be incurred or claimed.
- non-partisan sign rental including non-partisan bus bench rental
- insurance
- moving expenses

Appendix 1 (cont'd) The Legislative Assembly Act
The Members' Allowances Regulation

(c) if they are payable in connection with the rental accommodation occupied by the former member as a temporary residence while he or she was a member and would, but for his or her having ceased to be a member, qualify for the living allowance,

(i) temporary residence expenses described in subsection 25(1), and

(ii) living expenses described in clause 25(2)(b), except residential cleaning services.

The following on-going expenses can be claimed **as long as the temporary residence is not being used for any campaign purpose:**

- rent for the temporary residence and parking if not included in the rent
- furniture rental
- cable television
- utilities (hydro, gas, water)
- telephone rental, answering service and internet access. **No** long distance charges may be claimed. **No** expenses related to cellular phones or Blackberries may be claimed.
- insurance
- moving expenses

(d) if they are payable in connection with a temporary residence under section 25.1 and would, but for his or her having ceased to be a member, qualify for the living allowance,

(i) property taxes, prorated monthly,

(ii) mortgage interest,

(iii) monthly common element fees, if the residence is a condominium,

(iv) insurance premiums for the residence and its contents, prorated monthly,

(v) telephone rental and services,

(vi) utilities, including cable television,

(vii) moving household effects.

The following on-going expenses can be claimed as **long as the owned residence (designated as a temporary residence) is not being used for any campaign purpose:**

- property taxes, prorated monthly
- mortgage interest
- monthly common element fees, if the residence is a condominium
- cable television
- utilities (hydro, gas, water)
- telephone rental, answering service and internet access. **No** long distance charges may be claimed. **No** expenses related to cellular phones or Blackberries may be claimed.
- insurance
- moving expenses

M.R. Oct. 15/04

Restriction re expenses incurred in election period

8(3) Despite any other provision of this regulation except subsection (2), no allowance is payable in respect of an expense incurred during the election period of a provincial general election.

Expenses incurred during an election period, i.e. from the date the writs are issued to election day, **cannot be claimed except for expenses described in subsection (2) above.** If the constituency office or the temporary residence is being used for campaign purposes, then not even on-going maintenance expenses can be claimed.

Prorating of allowance

9(1) Subject to section 8, when a member is not a member throughout an allowance period, the

The annual, monthly and bi-weekly amounts of members' allowances are prorated for new members

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Appendix 1 (cont'd)

member's allowances for the period are to be prorated based on the number of days in the period that he or she is a member.

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based on the number of days remaining in the allowance period from and including election day. New members may be reimbursed eligible expenses from election day.

Appendix 1 (cont'd.)

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Continuous period of membership
9(2) A person who is a member immediately before a writ for a provincial election is issued and is re-elected as a member in that election is deemed to remain a member throughout the election period.

The annual, monthly and bi-weekly amounts of members' allowances are not prorated for re-elected members. Re-elected members are treated as if there had been no election. There is no double qualifying for expenses.

PART 2

CONSTITUENCY ALLOWANCE AND CONSTITUENCY ASSISTANTS ALLOWANCE

Maximum constituency allowance
10(1) The annual allowance (the "constituency allowance") payable to a member for authorized expenses for non-partisan access and service to constituents is

(a) for a northern member, $43,320.;

(b) for a southern member, $45,000.; and

(c) for a Winnipeg member, $48,528.

A member may claim expenses incurred to provide **non-partisan** service to constituents to an annual maximum amount of:

Northern members - $43,320.*

Southern members - $45,000*

Winnipeg members - $48,528*

*These amounts are effective April 1, 2004 and subject to a COLA each subsequent April 1.

Types of authorized expenses
10(2) The constituency allowance is payable only for the following types of expenses:

(a) authorized expenses for constituency office space, as described in section 11;

(b) authorized expenses for constituency service and constituency office operation, as described in section 12;

(c) authorized expenses for constituency staff, as described in section 13, to the extent that they exceed the member's constituency assistants allowance under section 10.1;

(d) authorized expenses for representation as described in section 14, not exceeding, in total, 15% of the constituency allowance for the allowance period.

The following types of expenses are eligible as constituency expenses.

a) office space (eg. rent, utilities, janitorial, signage);

b) office operating (eg. equipment and furniture, office supplies, telephone, printed advertisements or messages, registration fees, travel if travel allowance is depleted);

c) constituency staff (salary expense) if the maximum bi-weekly amount of the constituency assistants allowance has been reached;

d) representation (eg. greetings, hospitality, donations to a charity or non-profit organization, bursaries, raffle tickets, lapel pins and other souvenir items) subject to a yearly maximum of 15% of the constituency allowance.

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Appendix 1 (cont'd.)

"Non-partisan" defined
10(3) For the purpose of this section, **"non-partisan"** means

(a) without reference to any word, initial, colour or device that would identify a political party;

(b) free of any solicitation for money or votes on behalf of a person or political party;

(c) free of any statement advocating that money or votes not be given to a person or political party; and

(d) free of any statement advocating that a person

(i) join or not join a political party, or

(ii) continue to be, or cease to be, a member of a political party.

However, clause (a) does not apply in determining whether an expense described in clause 12(1)(g) or (h) (business cards, letterhead, internet communication, etc.) is for non-partisan access and service to constituents.

"non-partisan" means

a) no party names, colours, logos, or anything that identifies, **any party, even another party**. Except party name, colour and logo may be used on business cards, letterhead, envelopes (return and "send to" address) and internet communication. Envelope includes an actual envelope as well as a reply envelope that is incorporated into printed material, eg. survey;

b) no solicitation for money or votes for a political party;

c) no advocating that someone not support a political party with money or votes;

d) no soliciting membership in a party or advocating that someone quit a political party.

Constituency assistants allowance
10.1(1) Effective March 29, 2008, each member is entitled to a constituency assistants allowance to pay for authorized expenses for constituency staff, as described in section 13.

M.R. Jan. 14/08

Beginning with the 2008/2009 fiscal year, a constituency assistants allowance covers the employer's share of the cost of benefits for constituency assistants and the salary expense of constituency assistants to the maximum described below.

Maximum allowance
10.1(2) The maximum allowance is

(a) the equivalent of $3,000. per month ($1,378. bi-weekly) for salaries, including holiday and vacation pay; plus;

(b) the member's cost of employee benefits provided to the constituency staff in accordance with employment policies established by the Legislative Assembly Management Commission.

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The constituency assistants allowance has a salary expense maximum of $1,378 bi-weekly beginning with the first bi-weekly of the 2008/2009 fiscal year.

1. If a member claims **less than the maximum** bi-weekly amount, the unused balance is added to the next bi-weekly and so on. For example, if the payroll expense of a constituency assistant is $878 bi-weekly, the unused $500 accumulates each bi-weekly. This creates a rolling balance that, at the end of the year, would be $13,000 ($500 x 26 bi-weeklies)

2. If a member claims **more than the maximum** bi-weekly amount, the difference is an expense under the member's constituency allowance.

Appendix 1 (cont'd)

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Severance allowance for constituency staff

10.1(3) The constituency assistants allowance may also be used to pay a severance allowance equivalent to one week's pay per year of continuous service, up to a maximum of eight weeks' pay, to an employee with at least one year of service who has been dismissed without cause. This amount is included as a cost under clause (2)(b), and may be prorated for a part year of service.

The expense of a severance payment under the Employment Policies for Constituency Assistants is an authorized expense under the benefit category of the constituency assistants allowance.

M.R. Jan. 14/08

Cost of living adjustment

10.1(4) On April 1 of each year after 2008, the limit in clause (2)(a) is to be adjusted in accordance with subsection 17(2).

The bi-weekly salary expense maximum of the constituency assistants allowance is adjusted each April 1st according to Manitoba's CPI.

M.R. Jan. 14/08

Constituency office space

11(1) The following types of expenses are authorized expenses for office space to the extent that they are expenses of the member for the purpose of access and service to his or her constituents:

Constituency office space expenses include

(a) the rent for constituency office space, if it is paid directly by the Legislative Assembly to the person to whom it is due;

a) rent (paid direct by Members' Allowances Office);

(b) the expense of parking, janitorial services, snow removal, maintenance of grounds, utilities including cable television, and other services and facilities associated with the use, occupation or enjoyment of the constituency office space, if they are not included in the rent;

b) parking, janitorial, snow removal and lawn mowing, utilities, and anything else related to having constituency office space;

(c) the expense of renovation, repair and redecorating of the constituency office space;

c) constituency office renovation, repair, and redecorating;

(d) the expense of signs for the member's constituency office, including the expense of installing, moving, maintaining and removing them.

d) signs (no party names, colours, logos, or other identifiers). Installation, maintenance, and removing signs are allowable expenses.

Additional payment for higher office rent

11(2) A member whose monthly constituency office rent is more than 120% of the average monthly rent for constituency offices in the member's region may apply to the Legislative Assembly Management Commission for an increase in his or her constituency

A member may request additional consideration from LAMC for constituency office rent if his or her rent is more than 20% higher than the average rent for constituency offices in the same region (Winnipeg, Southern or Northern). If LAMC approves a rent

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Appendix 1 (cont'd)

allowance. The Commission may deny the application or approve an increase equal to all or any part of the rent in excess of 120% of the average rent.

supplement, that amount is added to the member's annual Constituency Allowance entitlement. LAMC has determined that approval is subject to a monthly minimum and maximum of $25.00 and $500.00 respectively.

LAMC has delegated consideration of applications for rent supplement to staff. These decisions may be appealed to LAMC.

Appendix 1 (cont'd) The Legislative Assembly Act
The Members' Allowances Regulation

Constituency service and office operation **12(1)** The following types of expenses are authorized expenses for constituency service and office operation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:	Constituency office operation expenses include:
(a) office supplies and stationery;	a) office supplies and stationery;
(b) office furnishings and equipment that are included in the standard suite of constituency office furnishings and equipment determined by the Legislative Assembly Management Commission;	b) **standard office** furniture, furnishings, and office equipment;
(c) support and maintenance of office equipment and software;	c) equipment and software maintenance;
(d) telephone services, including	d) telephones including
(i) installing a telephone,	i) installation
(ii) renting a telephone,	ii) telephone rent
(iii) extra directory listings,	iii) directory listing
(iv) telephone answering service,	iv) answering service
(v) Zenith telephone service, whether installed in the member's constituency office or residence,	v) 800 service
(vi) long distance calls, and	vi) long distance
(vii) mobile communication services, including all charges for voice, text, data and email services and related access fees;	vii) charges related to the use of cell phones, Blackberries, PDAs, or other mobile communication devices
(d.1) the cost of purchasing a cell-phone or other mobile communication device, a personal digital assistant or other handheld computing device, and any related warranty;	d.1) cell phones, Blackberries, PDAs or other mobile communication devices;
(e) postal, mailing, messenger and shipping services and other similar services in respect of printed material, including the expense of renting a post office box;	e) postal, courier, package services, post office box rental;
(f) bookkeeping, accounting and other professional services;	f) professional services. This does not include occasional services provided by an individual if, based on the circumstances, the individual could be considered an employee of the member.
(g) business cards, letterhead, envelopes and other	g) stationery (may have party name, colour, logo);

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Appendix 1 (cont'd)

similar material;	
(h) communication by internet or other electronic means, including the expense of establishing and maintaining a home page and any expenses relating to communicating with other persons using the internet;	h) internet expenses including expenses relating to developing and maintaining a home page (may have party name, colour, logo);
(i) advertising for the purpose of providing information to the public about	i) advertising that
(i) the location, address, telephone number or business hours of the member's office, or	i) provides information on how to contact the member's constituency office;
(ii) the time and place of public meetings;	ii) provides information on the time and place of public meetings;
(j) translation services for printed material;	j) translation of material;
(k) renting a meeting hall for meetings;	k) hall rental for a constituency meeting;
(l) insurance in respect of the constituency office;	l) constituency office insurance;
(m) newspapers;	m) newspapers;
(n) moving the contents of the constituency office;	n) moving expenses;
(o) messages in any newspaper, magazine or other publication;	o) messages printed in a newspaper or other publication;
(p) registration fees for conferences and courses;	p) course or conference registration fees;
(q) printing material for distribution;	q) incidental printing (only exceptions are Christmas cards and overage of non-partisan printing allowance expense);
(r) preparing information for broadcast and broadcasting it on radio and television.	r) broadcast on radio or television.

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Additional expenses of office operation

12(2) Subject to subsections (3) and (4), the following types of expenses are authorized expenses for office operation and constituency service to the extent that they are incurred by the member in the performance of his or her duties as a member or by a person engaged as the member's representative on constituency business:

When a member's travel allowance is depleted, travel expenses may be claimed under the constituency allowance.

Allowable travel expenses are:

(a) the expense of transportation by private vehicle, equal to the kilometric distance multiplied by the kilometric rate;

a) civil service mileage or expenses related to leasing a vehicle;

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(b) the actual expense of transportation other than by private vehicle;	b) airfare, bus fare, train fare, taxi fare, car rental;
(c) in the case of a non-Winnipeg member, the additional cost of automobile insurance that is attributable to commuting to Winnipeg;	c) Southern and Northern members may claim the amount of the excess cost of auto insurance precipitated by the "commuting to Winnipeg" factor. The allowable amount is the amount by which the premium exceeds comparable coverage without the commuting factor.
(d) the expense of meals at civil service rates;	d) meals at civil service rates;
(e) the expense of commercial accommodation in accordance with civil service guidelines;	e) hotel/motel accommodation;
(f) if commercial accommodation is not reasonably available, the expense of a gift at the civil service rate made to a person providing non-commercial accommodation.	f) where no commercial accommodation is available (remote areas only) the expense of a host/hostess gift at civil service rates (up to 80% of hotel/motel costs).
When expenses claimable under subsection (2) **12(3)** A member shall not be paid for authorized expenses under subsection (2) in an allowance period if he or she has not claimed the maximum travel allowance for the allowance period.	The member's travel allowance must be depleted before travel expenses can be claimed under the constituency allowance.
Maximum out-of-province travel expenses **12(4)** The maximum claimable under subsection (2) in an allowance period for travel outside Manitoba is the amount determined by the following formula:	Members may claim up to $3,000 per year (effective April 1, 2004, then subject to COLA each subsequent April 1) for travel outside Manitoba. This includes travel expenses and registration fees.
Maximum = $3,000. - (A + B)	Travel expenses are normally reimbursed from the member's travel allowance (unless the member's travel allowance is depleted). Registration fees are reimbursed from the member's constituency allowance.
In this formula:	
A is the total of the amounts claimed by the member in that allowance period under subsection 21(1) for travel outside Manitoba;	
B is the total of the amounts claimed by the member in that allowance period under clause (1)(p) for registration fees for conferences or courses outside Manitoba.	

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Appendix 1 (cont'd)

Authorized expenses for constituency staff

13 The following types of expenses are authorized expenses for constituency staff to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:

(a) the remuneration of an employee engaged in providing services to the member;

(b) employee benefits of the kind ordinarily payable by an employer for an employee described in clause (a).

The expense of a constituency assistants falls into two categories – salaries and benefits.

1. Salary Expense:

The constituency assistant salary expense is applied first to the constituency assistant allowance which has a bi-weekly maximum and then to the constituency allowance.

Constituency assistant salary expenses include:
- hourly pay
- vacation pay
- holiday pay
- sick leave unless the sick leave extends beyond a five day continuous period

2. Benefit Expense:

The constituency assistant benefit expense is applied to the constituency assistant allowance. A maximum is not applicable to the cost of benefits.

Constituency assistant benefit expenses include:
- employer's share of:
  - EI, CPP and WCB
  - health benefits
  - pension
- pay in lieu of notice on lay-off or termination
- severance pay
- sick leave beyond a five day continuous period

Authorized expenses for representation

14 The following types of expenses are authorized expenses for representation to the extent that they are incurred by the member for the purpose of access and service to his or her constituents:

Representation expenses include:

(a) the expense of providing to constituents cards, acknowledgements, flowers, non-monetary gifts to mark special occasions and other similar greetings;

a) special occasion greetings (eg. 80th birthday greetings);

(b) the expense of

b) hospitality

(i) purchasing a meal for two or more persons, or

i) meals (eg. meeting with reeve and councillors),

(ii) a bulk purchase of food or non-alcoholic beverages,

ii) bulk food purchase (eg. constituency open house);

if the purchase is made to provide hospitality in

where the member provides the reason(s) for the meal

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conjunction with constituency business and the member, when claiming the expense, provides particulars of the number of persons to whom the hospitality was provided and the reasons for providing it;	or meeting and the number of people attending;
(c) the expense of providing a bursary or scholarship, if a receipt for it is delivered when the expense is claimed;	c) a bursary or scholarship if a receipt is provided with the claim;
(d) the expense of a charitable donation or a donation to a non-profit organization, other than a political party, if	d) a charitable or non-profit donation if
(i) the official receipt for the donation is delivered when the expense is claimed, and	i) the official receipt is provided with the claim,
(ii) in the case of a charity registered under the *Income Tax Act* (Canada), no person claims a tax credit or deduction for the donation;	ii) no one claims a tax credit for the donation;
(e) the expense of a raffle ticket, if	e) a raffle ticket if
(i) the ticket is delivered when the expense is claimed, and	i) the ticket is provided with the claim,
(ii) any prize won by the member is donated to a registered charity;	ii) any prize won by the member is donated to a registered charity;
(f) the expense of lapel pins and other souvenir items for distribution to constituents.	f) souvenirs, eg. Pins and flags.
Capital property **15(1)** If personal property is purchased by or for a member with the member's constituency allowance, it is property of the Legislative Assembly and its cost is a capital expense for the purpose of this section and section 16, unless the property	Constituency office furniture, furnishings and equipment including computer equipment purchased as a single item or as a set for $161* or more is capital property and is owned by the Assembly.
(a) was purchased as a single item, or as a set, for less than $161;	Members' Allowances Offices keeps a record of capital property and its depreciation. When capital property is fully depreciated it is taken "off the books".
(b) has a useful life of less than one year; or	When a Member ceases, capital property must be purchased, returned or donated in accordance with the policy and procedures established by LAMC.
(c) is a cell-phone or other device referred to in clause 12(1)(d.1).	Cell phones, Blackberries, PDAs and other communication devices are not capital property.

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* This amount is effective April 1, 2007 and is subject to a COLA each subsequent April 1.

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Appendix 1 [cont'd.]

Carry-forward of capital expense
15(2) If a member's constituency allowance for an allowance period is not sufficient to pay for an authorized capital expense incurred in that period, the unpaid balance may be paid out of the member's constituency allowance for the next allowance period. For this purpose, a member who ceases to be a member before the end of the allowance period in which the expense was incurred is to be treated as a member to the end of the next allowance period.

A member can claim a capital expense over two fiscal years if the annual constituency allowance maximum of the member would otherwise be exceeded. The portion of the expense that is not reimbursed in the fiscal year in which the capital is purchased may be claimed at the start of the next fiscal year subject to the annual constituency allowance maximum in that fiscal year.

If the member ceases to be a member before the end of the fiscal year in which the capital was purchased, the balance of the expense may be claimed at the start of the second fiscal year even though the member is no longer a member at that time.

Capital allowance for office setup for new members
16 A new member is to be paid, in addition to his or her constituency allowance, up to $3,500, in capital expenses incurred for initial office setup. To be paid this additional amount, the member must incur and claim the expenses within the allowance period in which he or she was elected or in the next allowance period.

New members are able to claim an additional $3,500 (effective April 1, 2004 then subject to COLA each subsequent April 1), beyond their annual constituency allowance maximum on the purchase of capital for initial office setup. The expense must be incurred and claimed in the fiscal year in which the member was elected or the next fiscal year.

Cost of living adjustment
17(1) On April 1 of each year after 2004, the following amounts are to be adjusted in accordance with subsection (2):

(a) the constituency allowance in section 10;

(b) the dollar limit in subsection 12(4) in relation to out-of-province travel expenses;

(c) the amount in subsection 15(1) for determining whether an item is property of the Assembly;

(d) the capital allowance for new members in section 16.

The following amounts are adjusted each April 1st according to Manitoba's CPI:

a) the annual maximum amount of the constituency allowance;

b) the annual maximum amount for out-of-province travel;

c) the purchase price of an item that determines if the item is capital property;

d) the additional amount that a new member may spend on the purchase of capital for initial office setup.

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Adjustment according to Manitoba CPI
17(2) Each amount is to be adjusted by the percentage increase or decrease in the Consumer Price Index for Manitoba over the course of the previous calendar year. The adjusted amount is to be rounded up to the next dollar.

The above-noted amounts are subject to COLA based on the Consumer Price Index percentage change, year over year. The amounts are adjusted each April 1st.

No allowance during election period if office used

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for election

18 A member is not entitled to a constituency allowance for an election period if, at any time in that period, the member's constituency office is used in the election campaign of a candidate for election to a school board, the council of a local government district or municipality, the Assembly or the House of Commons.

If a member uses his or her constituency office in **any** election, no expenses can be claimed.

Non-arm's length expense not authorized

19 Despite any other provision of this Part, a non-arm's length expense is not an authorized expense under this Part.

A non-arm's length expense is not an authorized expense.

PART 3

TRAVEL ALLOWANCE

Travel allowance

20(1) The annual allowance (the "travel allowance") payable to a member for authorized travel expenses is:

Travel expenses related to members' duties can be claimed subject to the following annual maximum amounts:

(a) for a Winnipeg member, the base amount of $5,500.;

a) Winnipeg members - $5,500.00, effective April 1, 2007 then subject to COLA each subsequent April 1;

(b) for a northern member, the sum of

b) Northern members – the total of:

(i) the base amount of $12,312., and

i) a base amount of $12,312 effective April 1, 2004 then subject to COLA each subsequent April 1, and

(ii) 52 times the cost, determined in accordance with subsection (2), of a round trip by air by the most direct reasonable route between the Winnipeg International Airport and the government airport or landing strip nearest the member's residence in his or her electoral division or, if there is no such residence, the place in the division where he or she was nominated;

ii) the value of 52 round trips by air between the member's home in the constituency and the Winnipeg Airport (if the member does not live in the constituency then from the Winnipeg Airport to where the member was nominated under the Elections Act);

(c) for a southern member, the sum of

c) Southern members – the total of:

(i) 65 times the cost, determined in accordance with subsection (3), of a round trip by private vehicle by the most direct reasonable route between the Legislative Building and the member's residence in his or her electoral division or, if there is no such residence, the place in the division where he or she was nominated, and

i) the value of 65 round trips at civil service rates by car from the Legislative Building and the member's residence in the constituency (if the member does not live in the constituency then from the Legislative Building to where the member was nominated under the Elections Act), and

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Appendix 1 (cont'd)

(ii) the base amount determined according to the following table:

Electoral Division	Base Amount
Arthur-Virden	$26,062
Brandon East	13,763
Brandon West	13,814
Carman	16,246
Dauphin-Roblin	27,035
Emerson	21,375
Gimli	10,562
Interlake	23,528
La Verendrye	14,633
Lac du Bonnet	21,326
Lakeside	15,734
Minnedosa	20,523
Morris	14,402
Pembina	11,509
Portage la Prairie	10,459
Russell	29,188
Selkirk	9,256
Springfield	8,590
Ste. Rose	23,680
Steinbach	9,921
Swan River	31,979
Turtle Mountain	23,194

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ii) the base amounts indicated for each constituency. The amounts are effective April 1, 2007 and subject to COLA each subsequent April 1.

Cost of round trip by air for northern member

20(2) For the purpose of subclause (1)(b)(ii), the cost of a round trip by air is the cost, as determined by the Speaker as at the beginning of the allowance period in question, of travel

(a) by economy class on a regularly scheduled flight of a commercial airline, if there is one; or

The cost of air travel for the purpose of determining the value of 52 round trips for a northern member's travel allowance is based on:

a) economy rate on a regularly scheduled commercial airline;

or

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(b) by air charter, in any other case.	b) air charter if there is no regularly scheduled commercial air service.

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Appendix 1 (cont'd)

Cost of round trip by private vehicle by southern member

20(3) For the purpose of subclause (1)(c)(i), the cost of a round trip by private vehicle is the amount determined by the Speaker according to the following formula:

Cost = Distance x Civil Service Rate

In this formula,

"Distance" is the total distance of the round trip in kilometres;

"Civil Service Rate" is the single trip rate per kilometre payable to civil servants as at the beginning of the allowance period for travel by private vehicle south of the 53rd parallel.

The cost of a round trip by private vehicle for the purpose of determining the value of 65 round trips for a southern member's travel allowance is based on the total distance in kilometres for a round trip multiplied by the civil service mileage rate for travel south of the 53rd parallel.

For **claiming purposes only** and regardless of where the travel occurred:

- northern members are reimbursed at the northern civil service mileage, and
- southern members are reimbursed at the southern civil service mileage rate

Base amount adjusted by Manitoba CPI

20(4) On April 1 of each year after 2004, each base amount in subsection (1) is to be adjusted by the percentage increase or decrease in the Consumer Price Index for Manitoba over the course of the previous calendar year. The adjusted amount is to be rounded up to the next dollar.

Base amounts for northern members and southern members are subject to COLA based on the Consumer Price Index percentage change, year over year. The amounts are adjusted each April 1st.

Authorized travel expenses

21(1) The following types of expenses are authorized travel expenses to the extent that they are incurred by the member in the performance of his or her duties as a member or by a person engaged as the member's representative on constituency business:

A member may claim the following expenses incurred by the member while travelling on member business or by a member's representative (eg. staff person) while travelling on constituency business:

(a) the expense of transportation by private vehicle, equal to the kilometric distance multiplied by the kilometric rate;

a) civil service mileage **or** expenses related to leasing a vehicle;

(b) the actual expense of transportation other than by private vehicle;

b) airfare, busfare, trainfare, taxifare, car rental;

(c) in the case of a non-Winnipeg member, the additional cost of automobile insurance that is attributable to commuting to Winnipeg;

c) Southern and northern members may claim the amount of the excess cost of auto insurance precipitated by the "commuting to Winnipeg" factor. The allowable amount is the amount by which the premium exceeds comparable coverage without the commuting factor.

(d) the expense of meals at civil service rates;

d) meals at civil service rates;

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(e) the expense of commercial accommodation in accordance with civil service guidelines;	e) hotel/motel accommodation;
(f) if commercial accommodation is not reasonably available, the expense of a gift at the civil service rate made to a person providing non-commercial accommodation.	f) where no commercial accommodation is available (remote areas only) the expense of a host/hostess gift at civil service rates (up to 80% of hotel/motel costs).
Non-arm's length expense not authorized **21(2)** Despite subsection (1), a non-arm's length expense for transportation by other than a private vehicle is not an authorized expense.	Except for travel by a private vehicle, a non-arm's length expense is not an authorized expense.
Maximum out-of-province travel expenses **21(3)** The maximum claimable under this section in an allowance period for travel outside Manitoba is the amount determined by the following formula:	Members may claim up to $3,000 per year (effective April 1, 2004, then subject to COLA each subsequent April 1) for travel outside Manitoba. This includes travel expenses and registration fees.
Maximum = $3,000. - (A + B)	
In this formula:	
A is the total of the amounts claimed by the member in that allowance period under subsection 12(2) for travel outside Manitoba;	Travel expenses are reimbursed from the member's travel allowance (or constituency allowance if the member's travel allowance is depleted) and registration fees are reimbursed from the member's constituency allowance.
B is the total of the amounts claimed by the member in that allowance period under clause 12(1)(p) for registration fees for conferences or courses outside Manitoba.	
Cost of living adjustment **21(4)** The dollar amount in subsection (3) is to be adjusted in the same manner as the base amounts are adjusted under subsection 20(4).	The maximum amount for out-of-province travel is subject to COLA based on the Consumer Price Index percentage change, year over year. The amount is adjusted each April 1st.

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Appendix 1 (cont'd)

PART 4

COMMUTER AND LIVING ALLOWANCES

"Designated area" defined
22 In this Part, **"designated area"** means the area within a 50-kilometre radius of the Legislative Building.

Members who live outside a 50 kilometre radius of the Legislative Building may be eligible for a living allowance or, alternatively, a commuter allowance.

COMMUTER ALLOWANCE

Commuter allowance
23(1) A non-Winnipeg member whose principal residence is outside Winnipeg is entitled to be paid, for any month in which he or she does not receive a living allowance, a commuter allowance for the authorized expenses described in subsection (2).

A member is eligible for a commuter allowance in **any year** in which he or she **does not receive a living allowance if:**

a) the member's constituency is outside Winnipeg; and

b) the member lives outside Winnipeg.

Authorized expenses
23(2) The following expenses are authorized expenses to the extent that they are incurred by the member in connection with commuting:

(a) the expense of transportation by private vehicle between the member's principal residence and the limits of the City of Winnipeg by the most direct reasonable route, equal to the kilometric distance multiplied by the kilometric rate, to a maximum of

(i) six round trips per week, for any week in which the Assembly sits, and

(ii) two round trips per week for any other week; and

The Commuter Allowance allows a member to claim up to:

- the civil service mileage rate for six round trips by car from the member's home to the City of Winnipeg limits (**not** the perimeter highway) in a week when the Assembly is sitting, **or**

- the civil service mileage rate for two round trips in a week when the Assembly is not sitting

and

- up to 20 overnight stays in Winnipeg per session

(b) for each overnight stay in Winnipeg, to a maximum of 20 overnight stays per legislative session,

(i) the expense of commercial accommodation in accordance with civil service guidelines,

The expenses that can be claimed for each overnight stay are:

i) hotel/motel at single rates,

Appendix 1 (cont'd)

The Legislative Assembly Act
The Members' Allowances Regulation

(ii) the expense of two meals at civil service rates, and

(iii) incidental expenses at civil service rates.

Interpretation
23(3) For the purpose of subsection (2),

(a) a week begins on a Monday; and

(b) a legislative session begins

(i) in the case of the first session after a general election, on the polling day of that election, and

(ii) in any other case, on the first day of the session,

and ends when the legislature is dissolved or on the day before next session begins, whichever occurs first.

Non-arm's length expense not authorized
23(4) Despite subsection (2), a non-arm's length expense for commercial accommodation or incidental expenses is not an authorized expense.

LIVING ALLOWANCE

Living allowance
24(1) A non-Winnipeg member is eligible for a living allowance to pay for authorized temporary residence expenses and authorized living expenses if

(a) the member's principal residence is outside the designated area and the member has a temporary residence in Winnipeg;

(b) the member's principal residence is in Winnipeg and the member has a temporary residence that is

(i) outside the designated area, and

(ii) in his or her electoral division; or

ii) two meals at civil service rates per overnight stay,

iii) incidental expenses for overnight stays at civil service rates.

A week is Monday through Sunday.

A session begins on the first day of a session and ends on the day before the next first day of a session. In an election period, a session ends when the writs are issued and then begins again on election day.

A non-arm's length expense is not an authorized expense.

To be eligible for living expenses in any month, a member must:

- represent a constituency outside Winnipeg and

- not receive a commuter allowance in the same month

and

a) have his or her principal residence outside Winnipeg and the designated area (50 kilometre radius) and have a temporary residence in Winnipeg;

or

b) have his or her principal residence in Winnipeg, and have a temporary residence that is

i) outside Winnipeg and the designated area (50 kilometre radius); and

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Appendix 1 (cont'd.)

ii) in his or her constituency;

Appendix 1 (cont'd.) The Legislative Assembly Act
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(c) the member's principal residence is in the designated area outside Winnipeg and the member has a temporary residence in Winnipeg and a physical disability or infirmity that, in the opinion of the Legislative Assembly Management Commission, makes it reasonable for the member to maintain a residence in Winnipeg.

or

c) live (have his or her principal residence) outside Winnipeg, and have an infirmity that makes it reasonable that the person have a temporary residence in Winnipeg. Approval by LAMC is required.

Limitation

24(2) Despite subsection (1), a member is not entitled to a living allowance for any month for which he or she receives a commuter allowance.

To be eligible for living expenses in any month, a member must not receive a commuter allowance in the same month.

Amount of allowance

24(3) A member's maximum monthly living allowance is as follows:

An eligible member can be reimbursed up to

(a) $1009, for authorized temporary residence expenses as described in subsection 25(1); and

a) $1009* in any month for temporary residence expenses (rent, etc.); **and**

(b) for authorized living expenses as described in subsection 25(2),

b) living expenses up to

(i) if the member holds the position of Speaker, member of the Executive Council, Leader of the official opposition or Leader of a recognized opposition party, $605., and

i) $605* every month if the member is Speaker, a member of the Executive Council, Leader of the official opposition or Leader of a recognized opposition party, **or**

(ii) in any other case,

(A) $605. for a month in which the Assembly sits and for any two additional months designated by the member, and

(B) $126. for any other month.

ii) $605* in any month the Assembly sits and two additional months of the member's choice, and $126* in any month in which the Assembly does not sit.

*All amounts are effective April 1, 2004 and subject to COLA each subsequent April 1.

24(4) For the purpose of paragraph (3)(b)(ii)(A), the Assembly is deemed to sit, on any day considered under the *Rules, Orders and Forms of Proceeding of the Legislative Assembly of Manitoba* to be a sitting day of the Legislature.

For the purpose of b) ii), above, a month in which a standing or special committee sits is considered a sitting month. If a person has chosen that month as an additional month under b) ii), the member can choose a different month. Note that LAMC is not a standing or special committee.

M.R. Nov. 15/05

Authorized temporary residence expenses

25(1) The following expenses of the member are authorized temporary residence expenses:

These types of expenses can be claimed as temporary residence expenses:

(a) the rent for rental accommodation;

a) rent for an apartment;

The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd.)

(b) expenses relating to the use, occupation or enjoyment of the rental accommodation, including

(i) parking,

(ii) telephone rental and service, to the extent that they are not claimed as authorized living expenses under subsection (2),

(iii) utilities, including cable television, and

(iv) similar services and facilities to the extent that they are not claimed as authorized living expenses;

b)

i) parking (related to the apartment),

ii) telephone rental or charges related to the use of a cell phone, Blackberry, PDA or other mobile communication devise, answering service and internet access, if the expense is not being claimed as a living expense,

iii) utilities (hydro, gas, water) and cable television (related to the apartment),

iv) other similar expenses related to the apartment that are not included in the rent;

(c) the rent for furniture used in the rental accommodation;

c) rent for furniture (related to the apartment);

(d) expenses related to the rental of the furniture or its use or enjoyment in the rental accommodation, such as insurance and cleaning expenses, to the extent that they are not claimed as authorized living expenses.

d) other expenses (related to the rented furniture) eg. insurance on the furniture, cleaning of the furniture;

(e) expenses incurred after December 19, 2007, for moving household effects to or from a temporary residence, if they are not claimed as living expenses;

e) moving (in and out) expenses incurred after December 19/07, if the expense is not being claimed as a living expense,

(f) authorized temporary residence expenses included under clause 25.1(4)(b);

f) where a second owned residence is treated as a temporary residence, the expenses listed in clause 25.1(4)(b) are the only authorized temporary residence expenses that may be claimed by the member;

(g) insurance premiums for insurance referred to in subclause (2)(b)(iii), if they relate to a period after December 19, 2007, and are not claimed as living expenses.

g) tenant's insurance after December 19/07, if the expense is not being claimed as a living expense.

M.R. Jan. 14/08

Authorized living expenses

25(2) The following expenses of the member are authorized living expenses:

Providing they are expenses of the member, these types of expenses can be claimed as temporary living expenses;

(a) expenses for meals, dry cleaning, laundry service and laundry charges;

a) meals at civil service rates or to any amount with receipts, dry cleaning, laundry charges (coin op);

(b) expenses for

(i) telephone rental and services,

b) provided they are related to the apartment or the owned residence (designated as a temporary residence) the expense of:

Appendix 1 (cont'd.) The Legislative Assembly Act
The Members' Allowances Regulation

(ii) residential cleaning services,

(iii) insurance, commonly known as a tenant's package, and

(iv) moving household effects,

if they are related to the member's occupation of rental accommodation as a temporary residence or of a residence designated under section 25.1 as a temporary residence.

(c) insurance premiums referred to in subclause 25.1(4)(b)(iv), if they relate to a period after December 19, 2007, and are not claimed as temporary residence expenses.

M R Oct 15/04; Jan 14/08

i) telephone rental or charges related to the use of a cell phone, Blackberry, PDA or other mobile communication devise, answering service and internet access, if the expense is not being claimed as a temporary residence expense,

ii) apartment cleaning service,

iii) tenant's insurance if the expense is not being claimed as a temporary residence expense,

iv) moving (in and out) expenses, if the expense is not being claimed as a temporary residence expense;

c) where a second owned residence is treated as a temporary residence, insurance premiums, after December 19/07, related to that residence may be claimed as a living expense, if the expense is not being claimed as a temporary residence expense.

Non-arm's length expense not authorized

25(3) Despite subsections (1) and (2), a non-arm's length expense for anything referred to in subsection (1) or clause (2)(b) is not an authorized expense.

A non-arm's length expense is not an authorized expense.

Permanent residence treated as temporary residence

25.1(1) A non-Winnipeg member who owns and occupies a residence in Winnipeg as well as a residence outside the designated area may designate, in a form approved by the Speaker, one of those residences as a temporary residence for the purposes of this Part.

A non-Winnipeg member with two owned residences may be reimbursed expenses with respect to only one of the residences in any allowance period (fiscal year). One of the residences must be in Winnipeg and one outside a 50km radius of the Legislative Building.

M R Oct 15/04

25.1(2) A designation remains in effect until the member ceases to own and occupy the designated residence, or until it is replaced by a new designation.

The member must designate which residence is the temporary residence.

The designation is in effect as long as the member owns the two residences. A member may change the designation from one owned residence to the other owned residence but only with respect to a full fiscal year.

M R Oct 15/04

25.1(3) A member cannot make more than one designation in an allowance period, unless he or she no longer owns and occupies the designated residence.

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The Members' Allowances Regulation

Appendix 1 (cont'd)

M.R. Oct. 15/04

25.1(4) While a residence remains designated as a temporary residence under subsection (1) and the member continues to own and occupy the other residence referred to in that subsection,

(a) the designated residence is deemed to be a temporary residence of the member; and

(b) the member's authorized temporary residence expenses for the residence consist only of:

(i) property taxes,

(ii) mortgage interest,

(iii) common element fees, if the residence is a condominium,

(iv) premiums for the insurance of the residence and its contents,

(v) expenses for repairs that are necessary or advisable to maintain the structural integrity of the residence,

(vi) telephone rental and services, except to the extent that they are claimed as living expenses under subsection 25(2), and

(vii) utilities, including cable television.

These types of expenses can be claimed as temporary residence expenses with respect to an owned residence:

i) property taxes,

ii) mortgage interest,

iii) common element fees if a condominium,

iv) home owners' insurance premiums,

v) cost of repairs that are necessary to maintain the structural integrity of the home,

vi) telephone expenses unless they are claimed as a living expense,

vii) utilities, including cable television.

M.R. Oct. 15/04, Jan. 14/08

Cost of living adjustment: temporary residence expenses

26(1) On April 1 of each year after 2004, the amount of the living allowance for temporary residence expenses is to be adjusted by the percentage that a landlord is permitted by regulation under *The Residential Tenancies Act* to increase the rent charged for a rental unit in the year in which the adjustment is made.

The maximum monthly temporary residence expense limit (rent, etc) is subject to COLA based on the Provincial Rent Guideline set in the regulations under The Residential Tenancies Act. This is adjusted each April 1st.

Cost of living adjustment: living expenses

26(2) On April 1 of each year after 2004, the amount of the living allowance for living expenses is to be adjusted by the percentage increase or decrease in

The maximum monthly living expense limit (meals, etc.) is subject to COLA based on the change in Consumer Price Index. This is adjusted each April 1st.

Appendix 1 (cont'd.) The Legislative Assembly Act
The Members' Allowances Regulation

the Consumer Price Index for Manitoba over the course of the previous calendar year.

Rounding to nearest dollar

26(3) The adjusted amounts are to be rounded up to the next dollar.

The above amounts are rounded up to the next dollar.

Temporary residence used for election

27 A member is not entitled to a living allowance for any election period if, at any time in that period, the member's temporary residence is used in the election campaign of a candidate for election to a school board, the council of a local government district or municipality, the Assembly or the House of Commons.

If a member uses his/her apartment in **any** election, no expenses can be claimed.

The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd)

ALTERNATE LIVING ALLOWANCE

Alternate living allowance

28(1) A non-Winnipeg member who does not have a temporary residence in Winnipeg and

(a) has a principal residence outside the designated area; or

(b) has a principal residence outside Winnipeg in the designated area and has a physical disability or infirmity that, in the opinion of the Legislative Assembly Management Commission, would make it reasonable for the member to maintain a residence in Winnipeg;

may, instead of receiving a commuting allowance, elect to receive a living allowance for authorized expenses for overnight stays in Winnipeg, to a maximum of eight overnight stays per month.

An eligible member, who does not wish to keep an apartment, may claim up to 8 overnight stays in Winnipeg in any month. The member may **not** also claim commuting expenses.

Authorized expenses re overnight stays

28(2) The following types of expenses of the member are authorized expenses for overnight stays under this section:

(a) the expense of meals at civil service rates;

(b) the expense of commercial accommodation in accordance with civil service guidelines; and

(c) incidental expenses at civil service rates.

The following may be claimed as Overnight Stay Expenses

a) meals at civil service rates;

b) hotel/motel at single rate;

c) incidental expenses.

PART 5

INTERSESSIONAL COMMITTEE ALLOWANCE

"Intersessional period" defined

29(1) In this section, **"intersessional period"** means a period when the Legislature is not sitting and has not been or will not be sitting for at least 10 days.

Amended: Nov. 15/05

Committee expenses may only be claimed for meetings that are held intersessionally.

M.R. Nov. 15/05.

Appendix 1 (cont'd) The Legislative Assembly Act
The Members' Allowances Regulation

Allowance for attending intersessional committee
29(2) A member who is a member of a standing or special committee is entitled to be paid an allowance for authorized expenses of attending a meeting of the committee during an intersessional period.

A member of a standing or special committee or LAMC can claim expenses for attending an intersessional committee.

Authorized expenses
29(3) For the purpose of subsection (2), an expense is an authorized expense if it is approved by the Speaker and is not a non-arm's length expense for anything other than transportation by a private vehicle.

Committee expenses such as travel, accommodation, and meals as approved by the Speaker.

A non-arm's length expense is not an authorized expense.

PART 6

MISCELLANEOUS

Delegation by Speaker
30(1) The Speaker may delegate any of his or her responsibilities under this regulation, other than the power to approve expenses under section 29, to the official to whom the Speaker has delegated authority under section 52.24 of the Act.

The authority to approve payment of expense claims, disclose information, determine yearly adjustments, pro-rate entitlements, authorize prepayments, adjust transitional maximums, and maintain records has been delegated by the Speaker to certain staff of Administration and Members' Allowances Office.

Only the Speaker can make decisions regarding a member's absence from the House. Only the Speaker can table members' yearly expense reports.

Delegation to Deputy Speaker
30(2) The Speaker may delegate to the Deputy Speaker the authority to approve expenses for the purpose of section 29.

The Speaker can delegate approval of members' expenses in attending committee meetings to the Deputy Speaker.

Appeal
31(1) A member may appeal any decision or determination under this regulation to the Legislative Assembly Management Commission, whose decision is final.

A member may appeal **any** decision made under any other section of this regulation, except an LAMC decision to allow living expenses to a handicapped member who otherwise would not qualify for living expenses.

LAMC has delegated determination of appeals that relate to capital and representation matters and are in the amount of $500.00 or less, to staff. These decisions or determinations may be appealed to LAMC.

There is no further appeal from LAMC's decision.

The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd.)

Form of appeal **31(2)** The appeal must be in writing and must state (a) the decision or determination being appealed; and (b) the member's argument in support of the appeal.	Members' appeals to LAMC must be in writing. The written appeal must present the member's argument.
Repeal **32** Parts 3 and 7 of the *Indemnities, Allowances and Retirement Benefits Regulation* are repealed.	This Regulation replaces the provisions of the *Indemnities, Allowances and Retirement Benefits Regulation* that relate to members' allowances.
Coming into force **33** This regulation is deemed to have come into force on April 1, 2004.	All provisions in this Regulation take effect April 1, 2004.

July 13, 2004
Date

Commissioner for MLA Pay, Allowances and Retirement Benefits

"Earl E. Backman"

NOTES:

Regulation made:

July 13, 2004	by Earl E. Backman, Commissioner for MLA Pay, Allowances and Retirement Benefits

Regulation amended:

October 15, 2004	by Earl E. Backman, Commissioner for MLA Pay, Allowances and Retirement Benefits
November 15, 2005	by the Legislative Assembly Management Commission
January 14, 2008	by Michael D. Werner, Commissioner for MLA Pay, Allowances and Retirement Benefits

The Legislative Assembly Act
The Members' Allowances Regulation

Appendix 1 (cont'd.)

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November 15, 2005	by the Legislative Assembly Management Commission
January 14, 2008	by Michael D. Werier, Commissioner for MLA Pay, Allowances and Retirement Benefits

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Appendix 2

The Legislative Assembly Act
The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

THE LEGISLATIVE ASSEMBLY ACT
(C.C.S.M. c. L110)

Members' Salaries, Allowances and Retirement Plans Disclosure Regulation

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2	Records to be maintained
3	Access to records
4	Report of member's expenses
5	Delegation
6	Repeal
7	Coming into force

Definitions

1 The following definitions apply in this regulation.

"Act" means *The Legislative Assembly Act*. (« *Loi* »)

"expense allowance" means an allowance paid or payable under the *Members' Allowances Regulation*. (« allocation pour frais »)

"retirement plan" means, depending on the context,

(a) an RRSP or tax-paid trust to which contributions are made under Part 2 of the *Members' Retirement Benefits Regulation*; or

(b) the defined benefit pension plan consisting of the benefits described in Parts 3 and 4 of the *Members' Retirement Benefits Regulation*. (« régime de retraite »)

"salary" means salary paid or payable under the *Members' Salaries Regulation*. (« traitement »)

"transition allowance" means the transition allowance provided for in Part 5 of the *Members' Retirement Benefits Regulation*. (« allocation de transition »)

M.R. January/08.

This right column provides an explanation of the left column on each page.

This Regulation determines what information is made public with respect to the following:

- constituency allowance
- constituency assistants allowance
- capital allowance for new members
- travel allowance
- commuter allowance
- living allowance
- committee allowance
- transition allowance
- members' RRSP, Tax Paid Trust or Pension Plan (LAPP)
- members' basic salary and additional salary for special positions

All persons making use of this consolidation are reminded that it has no legislative sanction. This consolidates the amendment made on January 14, 2008 (Manitoba Gazette - Part 1 – January 26, 2008).

The Legislative Assembly Act

The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

Appendix 2 (cont'd.)

Records to be maintained

2 The Speaker must maintain the following records:

(a) a record of the basic and any additional salary paid to each member, including

(i) the date and amount of each payment, and

(ii) the details of each cost-of-living adjustment made to such salary, including how the adjustment was determined and when it was made;

(b) the records required by subsection 2(6) of the *Members' Salaries Regulation* with respect to members' absences when the Legislative Assembly is sitting;

(c) for each type of expense allowance, a record of

(i) the maximum allowance payable, as well as the details of each cost-of-living adjustment made to the maximum, including how the adjustment was determined and when it was made,

(ii) particulars of the amounts expended and remaining to be expended,

(d) a record of each expense allowance claim paid and of the documentation that accompanied the claim;

(e) for each member whose constituency allowance or constituency assistants allowance was used to pay for authorized expenses for constituency staff, a record of

(i) the name of the member,

(ii) the name of the person paid, and

(iii) the amount paid;

The following records must be kept by the Assembly.

a) any salary paid to a member

i) the payroll date and amount paid,

ii) the details of how any COLA was determined and when it was added to the salary amounts;

b) records regarding a member's absence from the House, but not the actual reason for the absence;

c) for the constituency allowance, constituency assistants allowance, capital allowance for new members, travel allowance, commuter allowance, living allowance and committee allowance:

i) the maximum expenses a member is entitled to claim and how the maximums were determined, including any COLA adjustment, and

ii) how much has been claimed by a member to date and how much is left;

d) for each allowance claim, the actual claim and all receipts or other documentation relating to a claim;

e) for constituency assistants

i) the employing member's name,

ii) the constituency assistant's name,

iii) the amount paid to date to the constituency assistant;

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Appendix 2 (cont'd.) The Legislative Assembly Act

The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

(f) for each member participating in a retirement plan, a record of	f) for each member a record of
(i) the type of plan in which the member is participating, and	i) whether contributions are being made to RRSP, tax paid trust or pension plan, and
(ii) the amount and date of each contribution to the plan;	ii) the amount that is contributed to the plan and the date of contribution;
(g) a record of the date and amount of each transition allowance payment made to a former member;	g) a record of transition allowance payments;
(h) a record of each exemption from disclosure made under subsection 3(6) and the date it was made.	h) a record indicating that the Speaker has exempted information from disclosure at the request of a member.

MR January/08

Access to records

3(1) The Speaker must ensure that the records under section 2 are kept and made available for inspection in accordance with this section.	The public can get records for the current fiscal year and the previous five fiscal years.
3(2) Records relating to the current fiscal year or to one of the two immediately preceding years are to be kept in the Members' Allowances Office and, subject to subsection (6), are to be made available for inspection by any person upon request and payment of the applicable fee.	All records for the current fiscal year and the two previous fiscal years are kept at Members' Allowances Office. During regular working hours, the public can request searches and copies of these records. The records are available for inspection at the Members' Allowances Office without delay.
3(3) Records relating to one of the next three preceding fiscal years are to be kept in the Provincial Records Office and, subject to subsection (6), are to be made available for inspection by any person upon reasonable notice and payment of the applicable fee.	All records that are three to five years old are kept at and may be retrieved from the Provincial Records Centre. After five years, the records are destroyed. Requests can be made as above. The records will be made available within a reasonable period of time.
3(4) A person inspecting a record may obtain a copy of it upon payment of the applicable fee.	There may be a charge for searches and photocopies of records.
3(5) The fees payable under this section are the fees that would apply in similar circumstances under *The Freedom of Information and Protection of Privacy Act*.	Fees for searches and photocopies will be charged at the rates that prevail under *The Freedom of Information and Protection of Privacy Act*.
3(6) Upon the written request of a member, the Speaker may in writing exempt specified information or a specified record from inspection and copying under this section if he or she is satisfied that the disclosure of the information would reasonably be expected to pose a threat to the security of the member or any other person.	A member may apply to have his/her personal information severed from records if the member feels that release of his/her personal information could create a threat to any person. Personal information would include residence address, phone number, etc.

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The Legislative Assembly Act
The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

Appendix 2 (cont'd)

Report of member's expenses

4(1) For each fiscal year, each member must

(a) prepare a report, in a form approved by the Legislative Assembly Management Commission, of the member's authorized expenses for each type of expense allowance paid to or for the benefit of the member during the fiscal year; and

(b) provide a copy of the report, on or before June 30 of the next fiscal year, to the Speaker and to the official appointed by the Speaker under section 52.24 of the Act.

Before July 1st each year, every member must:

a) prepare a report by expense allowance, by category, of the totals claimed. A draft report, suitable for tabling, will be provided to each member by Members' Allowances Office;

b) provide a signed copy of the report to Members' Allowances Office and to the Speaker.

4(2) The Speaker must table a copy of the report in the Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

The Speaker is required to table members' reports within 15 days if the House is in session. **Or** the Speaker is required to table members' reports within 15 days of the House opening if the House is not in session when the Speaker receives the reports.

4(3) A copy of the report must be kept available for inspection during normal business hours

(a) at an office in the Legislative Building designated for the purpose by the Legislative Assembly Management Commission; and

(b) at the member's constituency office or, if the member does not have a constituency office, within a reasonable time after the member receives a request to inspect it;

for at least five years after the end of the fiscal year to which the report relates.

The member will have to keep a copy of his/her reports available to the public for five years

a) in Members' Allowances Office; and

b) in his/her constituency office or if the member has no constituency office, then the member must make the report available on request within a reasonable time period.

Delegation

5 The Speaker may delegate any of his or her responsibilities under this regulation to the official to whom the Speaker has delegated authority under section 52.24 of the Act.

The authority to maintain records has been delegated by the Speaker to certain staff of Administration and Members' Allowances Office.

Repeal

6 Part 5 of the *Indemnities, Allowances and Retirement Benefits Regulation* is repealed.

Part 5 of the *Indemnities, Allowances and Retirement Benefits Regulation* dated October 14, 1994 is replaced with the *Members' Salaries, Allowances and Retirement Plans Disclosure Regulation*.

Appendix 2 (cont'd.)

The Legislative Assembly Act
The Members' Salaries, Allowances and Retirement Plans 2009 Disclosure Regulation

Coming into force

7(1) Except as provided in subsection (2), this regulation is deemed to have come into force on April 1, 2004.

The provisions in this Regulation take effect retroactively to April 1, 2004, except as indicated below.

7(2) Any provision of this regulation that relates to a retirement plan or to the transition allowance comes into force on the day that the defined benefit plan provided for in Part 3 of the *Members' Retirement Benefits Regulation* is registered under the *Income Tax Act* (Canada).

Provisions for disclosure of records relating to the Legislative Assembly Pension Plan (LAPP) or to the transition allowance come into effect when the LAPP is registered with Canada Revenue Agency (CRA).

October 15, 2004
Date

Commissioner for MLA Pay, Allowances and Retirement Benefits/

"Earl E. Backman"

NOTES:

Regulation made:

October 15, 2004 — by Earl E. Backman, Commissioner for MLA Pay, Allowances and Retirement Benefits

Regulation amended:

January 14, 2008 — by Michael D. Werier, Commissioner for MLA Pay, Allowances and Retirement Benefits

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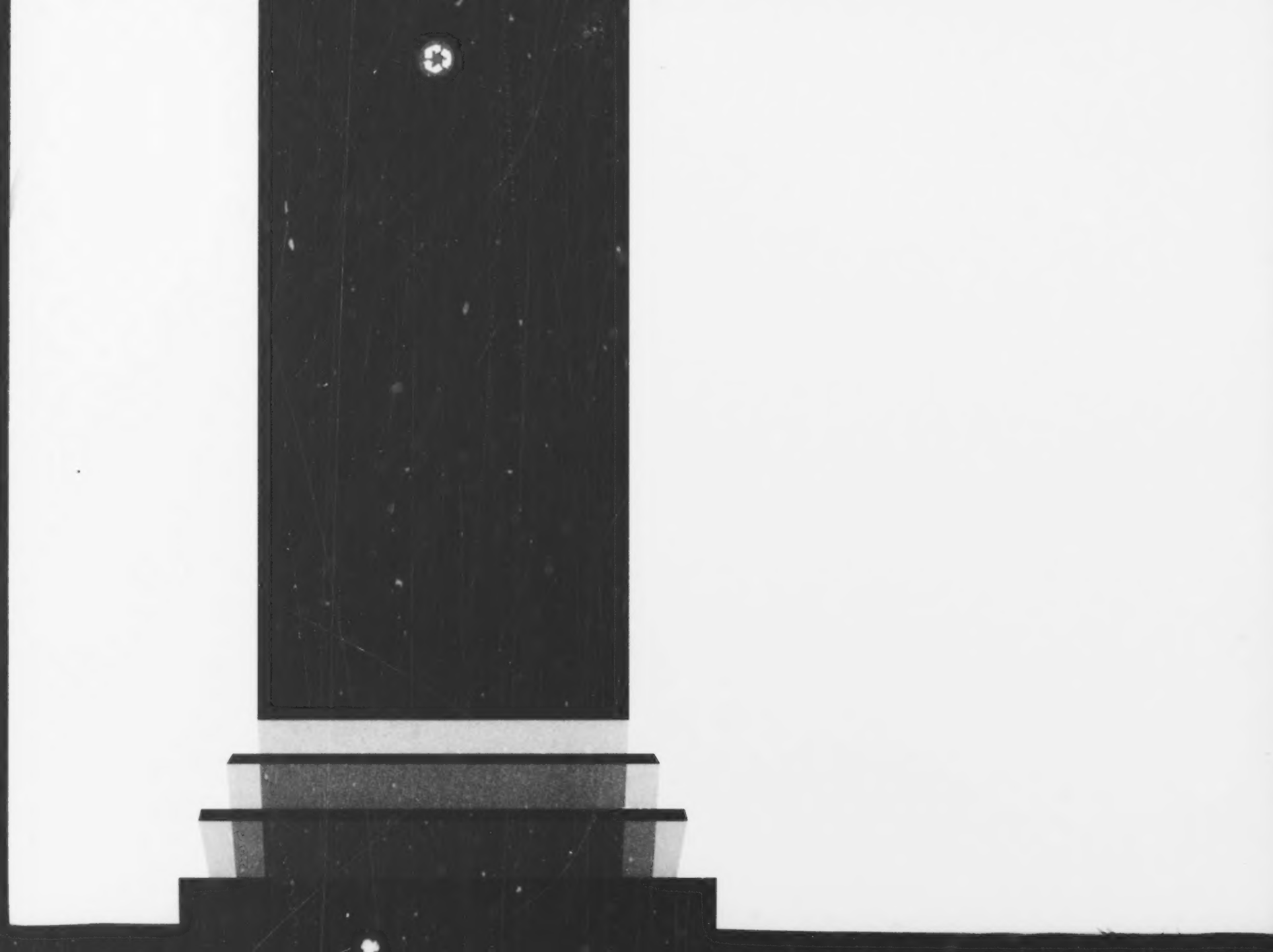
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